REMITTITUR.

SUPREME COURT OF THE UNITED STATES.

No. ~~386.~~ 154

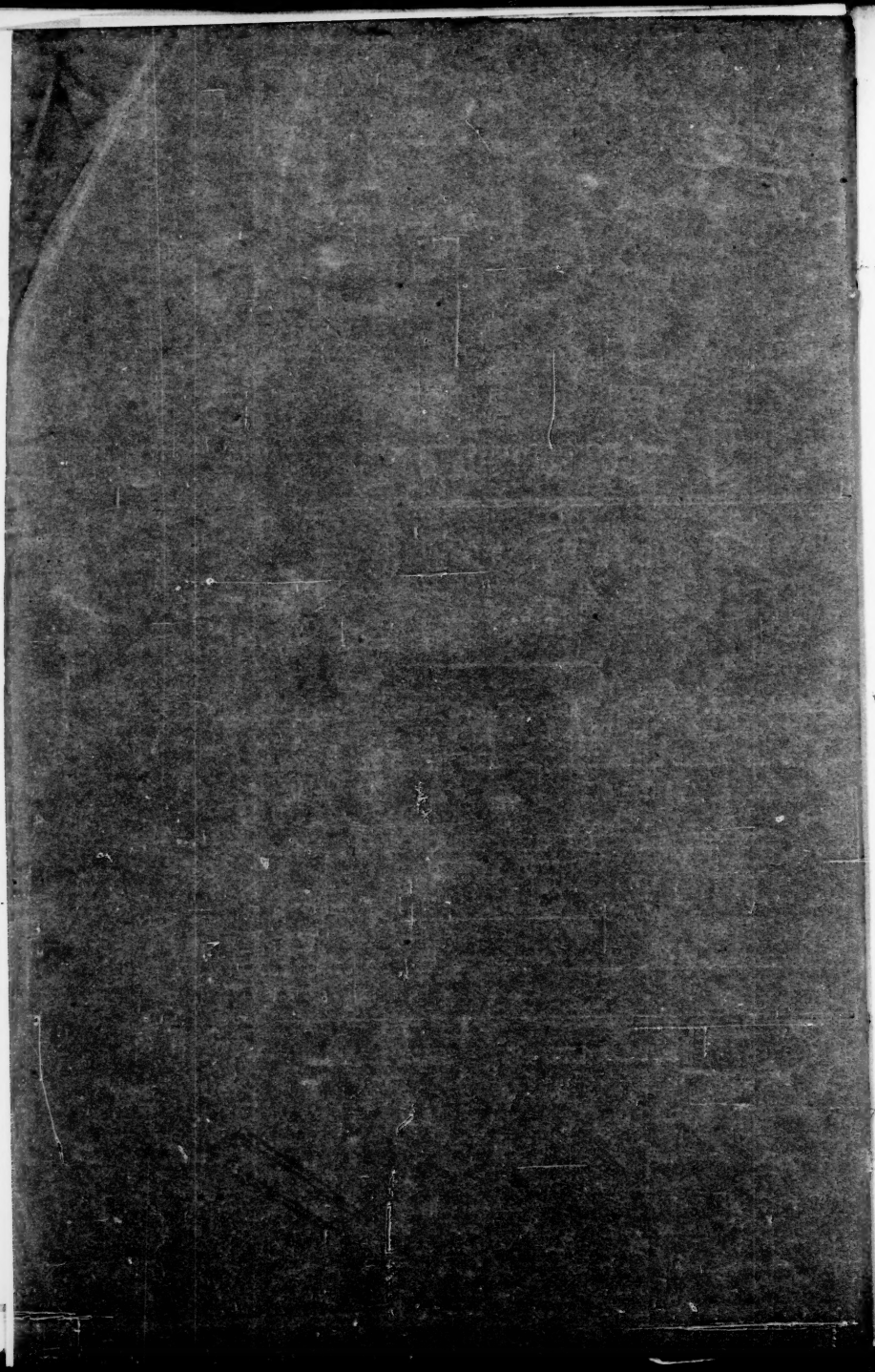
WILLIAM W. CRAPO, GEORGE F. TRIPP, JOSHUA B. TOBEY, REUBEN NYE, GEORGE A. SHAW, JOHN E. WILLIAMS, AND ROBERT MINTURN, PLAINTIFFS IN ERROR,

vs.

JOHN KELLY, SHERIFF OF THE CITY AND COUNTY OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED NOVEMBER 18, 1871.



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1 *Summons.—For a money demand on contract.*

In the supreme court, city and county of New York.

JOHN KELLY, SHERIFF OF THE CITY AND COUNTY of New York,
against
WILLIAM W. CRAPO, GEO. F. TRIPP, JOSHUA B. Tobey, Reuben Nye, George A. Shaw, John E. Williams, and Robert Minturn.

To the defendants above named:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers, at their office, number two Hanover street, in the city of New York, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will take judgment against you for the sum of three thousand dollars, with interest from the fourteenth day of June, one thousand eight hundred and sixty-one, besides the costs of this action.

Dated November 15, 1861.

EVARTS, SOUTHMAYD & CHOATE,
Plaintiff's Attorneys.

2 In the supreme court, city and county of New York.

JOHN KELLY, SHERIFF OF THE CITY AND COUNTY of New York,
against
WILLIAM W. CRAPO, GEO. F. TRIPP, JOSHUA B. Tobey, Reuben Nye, George A. Shaw, John E. Williams, and Robert B. Minturn.

John Kelly, sheriff of the city and county of New York, complains of William W. Crapo, George F. Tripp, Joshua B. Tobey, Reuben Nye, George A. Shaw, John E. Williams, and Robert B. Minturn, and thereupon said plaintiff states:

That, heretofore, and on or about the twenty-fourth day of April, one thousand eight hundred and sixty-one, one Edward Mott Robinson commenced an action in this court against William L. B. Gibbs, William Jenney, and Edmund Allen, for the recovery of six thousand and four dollars and six cents, and interest; that, in said action, upon the application of said Edward Mott Robinson, plaintiff therein, the Honorable Josiah Sutherland, a justice of this court, issued a warrant in the name of the people of the State of New York, directed to the sheriff of the city and county of New York, commanding him to attach and safely keep all the property of the defendants in said action, the said William L. B. Gibbs, William Jenney, and Edmund Allen, within his county, or so much thereof as would be sufficient to satisfy the said plaintiff, Robinson's, demand in said action of six thousand and four dollars and six cents, together with costs and expenses; and that he proceed thereon in the manner required of him by law; that, thereupon, the said sheriff did, under and by virtue of said warrant, on the

thirtieth day of April aforesaid, attach, as the property of the
3 said defendants in the said action, the said Gibbs, Jenney, and Allen, the one undivided half part of a certain ship or vessel called the Arctic, then lying at anchor in the harbor of New York, and took into his custody and retained therein the said vessel, under and by virtue of said attachment, until the one undivided half thereof so attached was discharged from such attachment, as hereinafter stated.

That, afterwards, and on or about the tenth day of June, one thousand eight hundred and sixty-one, an application was made to said justice by the defendants herein, William W. Crapo, George F. Tripp, Joshua B. Tobey, Reuben Nye, and George A. Shaw, claiming to be owners of the said one undivided half of said vessel which had been so attached, and praying that the same might be valued, according to the statute in such case made and provided; and, thereupon, it appearing upon said application that the said vessel belonged to the port of Fairhaven, in Massachusetts, one of the United States, the said officer caused the said one undivided half of said vessel, which had been so seized and attached as aforesaid, to be valued by three indifferent men appointed by him, namely, B. F. Small, William H. Starbuck, and R. P. Buck, who thereupon proceeded to appraise said vessel, and, upon such appraisement, valued the one undivided half of said vessel, which had been attached as aforesaid, at the sum of three thousand dollars.

That thereupon the said defendants made and executed, under their respective hands and seals, and delivered to said justice—the said defendants, Crapo, Tripp, Tobey, Nye, and Shaw, as principals, and the said defendants, Williams and Minturn, as sureties—their certain bond or obligation, of which a copy is hereunto annexed, marked Schedule A, and made a part of this complaint.

That the said justice approved the said bond, and the sureties therein named who had executed the same; and thereupon, on the seventeenth day of June, 1861, according to the form of the statute in such case made and provided, ordered the said one undivided half of said vessel called the Arctic, which had been attached and seized as aforesaid, to be discharged from the said attachment; whereupon the said
4 sheriff, upon the receipt of such order, and on the day last aforesaid, discharged the said one undivided half of said vessel, and delivered up the said vessel to the said claimants, the said defendants, Crapo, Tripp, Tobey, Nye, and Shaw.

And the plaintiff further states that the said warrant of attachment has never been set aside, revoked, countermanded, or discharged, but that the same still remains in full force and effect; that the said Edward Mott Robinson heretofore recovered judgment in said action against the said Gibbs, Jenney, and Allen, the defendants therein, for the sum of six thousand five hundred and sixty-three dollars and two cents, and execution has been thereupon duly issued to the sheriff of the city and county of New York, which execution still remains in the said sheriff's hands, wholly unsatisfied.

And the plaintiff further says that the said claimants, Crapo, Tripp, Tobey, Nye, and Shaw were not, nor was either of them, at the time of the making of said seizure of the said one undivided half of said vessel under said attachment, owners or owner of the said one undivided half so seized as aforesaid, or of any portion thereof.

And the plaintiff says that, by reason of the premises, and of the statute in such case made and provided, the said defendants are justly indebted to him in the sum of three thousand dollars, with interest thereon from the fourteenth day of June, 1861, according to the tenor

of the said bond; and that, although thereunto duly requested, they have hitherto wholly neglected and refused, and still neglect and refuse, to pay the same:

Wherefore the plaintiff demands judgment against the defendants for the sum of three thousand dollars, with interest from the fourteenth day of June, 1861, besides costs.

EVARTS, SOUTHMAYD & CHOATE,
Plaintiff's Attorneys.

5 SCHEDULE A.

Know all men by these presents that we, William W. Crapo, George F. Tripp, Joshua B. Tobey, Reuben Nye, and George A. Shaw, all of Massachusetts, as principals, and John E. Williams and Robert B. Minturn, both of New York, as sureties, are held and firmly bound unto the people of the State of New York in the sum of six thousand dollars, lawful money of the United States, to be paid to the said The People of the State of New York, their successors or assigns; for which payment, well and truly to be made, we bind ourselves, our, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, dated this fourteenth day of June, one thousand eight hundred and sixty one.

Whereas, on or about the twenty-fourth day of April last, in an action then pending, or about to be commenced in the Supreme court in the State of New York, in which Edward Mott Robinson was plaintiff, and William L. B. Gibbs, W'm Jenney, and Edmund Allen were defendants, the Hon. Josiah Sutherland, one of the justices of said court, issued a warrant in the name of The People of the State of New York, directed to the sheriff of the city and county of New York, commanding him to attach and safely keep all the property of said defendants within his county, or so much thereof as would be sufficient to satisfy the plaintiff's demand of six thousand and four dollars and six cents, with interest, together with costs and expenses, and that he proceed thereon in the manner required of him by law; and whereas said sheriff did, under and by virtue of said warrant, on or about the thirtieth day of said April, attach, as the property of said defendants, the one undivided half part of a certain ship or vessel called the Arctic, then lying at anchor in the harbor of New York, and has ever since retained said vessel in his custody, under and by virtue of said attachment; and whereas, on or about the tenth day of June, one thousand eight hundred and sixty-one, an application was made to said justice by William

6 W. Crapo, George F. Tripp, Joshua B. Tobey, Reuben Nye, and George A. Shaw, claiming to be owners of said one undivided half of said vessel, and praying that the same might be valued by three indifferent men to be appointed by said justice; and thereupon, it appearing that said vessel belonged at Fairhaven, in the Commonwealth of Massachusetts, the said justice, pursuant to the statute in such case made and provided, made an order appointing B. F. Small, William H. Starbuck, and R. P. Buck, all of the city of New York, three indifferent men, to value said undivided one-half of said vessel, and thereby directed said appraisers to proceed with all convenient speed, and examine said vessel, and thereupon to estimate according to the best of their skill and judgment, the value of said one undivided one-half of said vessel; and when they had completed their said valuation, to return a statement or certificate thereof to Messrs. Evarts, Southmayd & Choate, No. 2 Hanover street, the attorneys for said plaintiff, and to Messrs.

Pierrepont, Stanley & Langdell, No. 16, Wall street, the attorneys for said claimants; and whereas, on the eleventh day of said June, said appraisers certified to said attorneys, in writing, under their hands and seals, that they had proceeded to and examined the ship Arctic, in said order named, and had thereupon estimated according to the best of their skill and judgment, the value of one undivided half of said ship, and that the amount of said estimate or valuation was the sum of three thousand dollars:

Now, therefore, the condition of the above obligation is such that if in a suit to be brought thereon, the above-named claimants shall establish that they were the owners of said undivided one-half of said vessel, attached as aforesaid, at the time of said seizure, or in case, in such suit to be brought as aforesaid, said claimants shall fail to establish that they were the owners of said undivided one-half of said vessel at the time of said seizure, it then said claimants shall pay the full amount of said valuation, to wit, the said sum of three thousand dollars, with interest thereon from the date hereof, to the sheriff of the city and county of New York, to be held and disposed of by him under said attachment or, in case the said attachment be discharged, to the said defendents Gibbs, Jenney, and Allen, or their personal representatives
7 then the above obligation to be void; otherwise the above obligation to be and remain in full force and virtue.

W'M W. CRAPO. [L. S.]
GEO. F. TRIPP. [L. S.]
JOSHUA B. TOBEY. [L. S.]
By his attorney, W'M. W. CRAPO.
W'M W. CRAPO [L. S.]
REUBEN NYE. [L. S.]
GEO. A. SHAW, [L. S.]
By his attorney, W'M W. CRAPO.
JOHN E. WILLIAMS. [L. S.]
ROB'T B. MINTURN. [L. S.]

Sealed and delivered in presence of,—
EDMUND T. ALLEN, *to W. W. C., G. F. T., J. B. T. by W. W. C., R. N., G. A. S. by W. W. C.* C. C. LANGDELL, *to John E. Williams and Robert B. Minturn*

In the supreme court, city and county of New York.

JOHN KELLY, SHERIFF OF THE CITY AND county of New York,
against
WILLIAM W. CRAPO, GEO. F. TRIPP, JOSHUA B. Tobey, Reuben Nye, George A. Shaw, John E. Williams, and Robert B. Minturn.

8 The answer of the defendants above-named to the complaint of the above-named plaintiff in this action shows to the court as follows:

First. The defendants deny each and every material allegation in the complaint contained.

Second. And for a further separate and distinct defence, the defendants say that, at the time of issuing the warrant of attachment mentioned in the complaint, the defendants, William W. Crapo, George F. Tripp, Joshua B. Tobey, Reuben Nye, and George A. Shaw, were the

absolute owners of said undivided half part of said ship Arctic, attached by the plaintiff as stated in said complaint, and continued to be such absolute owners until said undivided half of said vessel was released from said attachment at the time and in the manner stated in said complaint, and the said William L. B. Gibbs, William Jenney, and Edmund Allen, mentioned in the complaint, were not at the time of issuing said warrant, nor at any time since, nor was either of them owners of said one undivided half of said vessel, nor of any part thereof, nor had they or either of them any right or title thereto, or interest therein.

Wherefore the defendants demand judgment, that said complaint be dismissed with costs.

PIERREPONT, STANLEY & LANGDELL,
Def'ts Att'ys.

9 In the supreme court, city and county of New York.

JOHN KELLY, SHERIFF OF THE CITY AND county of New York,
against
WILLIAM W. CRAPO, GEO. F. TRIPP, JOSHUA B. Tobey, Reuben Nye, George A. Shaw, John E. Williams, and Robert B. Minturn.

This action came on to be tried before Mr. Justice Gould and a jury, at a circuit held in the first judicial district on the 18th day of June, 1863.

The plaintiff, to maintain the issues on his part, put in evidence the bond described in the complaint, of which a true copy is to the complaint annexed; also a certain stipulation indorsed on said bond, which is as follows:

"It is hereby stipulated that in any action to be brought on the within bond, no objection shall be taken that the interest of said claimants or the interests of said defendants are or were several and not joint; and if said claimants shall establish their ownership, at the time in said bond designated, of some portion of the one-half interest attached, but not the whole, they shall be entitled to a pro-rata reduction from the amount of said valuation.

"New York, 12th June, 1861.

"EVARTS, SOUTHMAYD & CHOATE,
"*Att'ys for Ed. Mott Robinson.*
"PIERREPONT, STANLEY & LANGDELL,
"*Att'ys for above Obligors.*"

The plaintiff's counsel next put in evidence the warrant of attachment mentioned in the complaint and the affidavit, and undertaking on which the same was granted, and the summons and complaint in the original action of Robinson vs. Gibbs, Jenney, and Allen, the said proceedings being in all respects conformable to the provisions of "the Code of
10 Procedure" providing for attachments against non-resident debtors.

The summons was for money demand on contract in the usual form, and the complaint prayed judgment for the sum of six thousand and four dollars and six cents, with interest, being the amount due on two promissory notes, dated at Fairhaven, Mass., on the 21st day of June, 1860, and the 3d day of September, 1860, respectively, each for $3,000

at five months from date, made by the defendants Gibbs and Jenney, and indorsed by the defendant Allen.

The plaintiff's counsel next read in evidence the following stipulation:

In the supreme court, city and county of New York.

JOHN KELLY, SHERIFF OF THE CITY AND county of New York,
against
WILLIAM W. CRAPO, GEORGE F. TRIPP, Joshua B. Tobey, Reuben Nye, George A. Shaw, John E. Williams, and Robert B. Minturn.

It is hereby stipulated that, in the trial of the action, the following facts shall be admitted by the respective parties hereto:

That the ship Arctic, referred to in the pleadings herein, at the several times herein and in said pleadings mentioned, was an American vessel, and duly registered as such in the port of Fairhaven, in the district of New Bedford, and Commonwealth of Massachusetts, that being the port where said vessel belonged.

That, on the 12th day of November, A. D. 1860, said ship was in the port of Honolulu, in the Sandwich Islands, she having been employed for some two or three years previous thereto in a whaling voyage
11 in the Pacific Ocean, and having then recently terminated said whaling voyage at said port of Honolulu.

That, on said 12th day of November, 1860, said vessel was chartered to the American Guano Company of the city of New York, to proceed from said port of Honolulu to Baker's and Howland's Islands, in the said Pacific Ocean, and there receive on board a cargo of guano, and transport the same to the port of New York; that said Baker's and Howland's Islands lie near the equator, and at about 176 degrees of longitude west from Greenwich, and are within a few miles of each other.

That said vessel proceeded to said islands, pursuant to said charter-party, received on board said cargo of guano, and, on the 18th day of January, 1861, set sail from said islands for the port of New York, where she arrived direct on the 30th day of April, 1861.

Then at the several times herein, and in said pleadings mentioned, William L. B. Gibbs, William P. Jenney, and Edmund Allen, herein and in said pleadings mentioned, were citizens of Massachusetts, and resided in said Fairhaven, in the county of Bristol, in said State.

That, on the 9th and 20th days of February, 1861, and prior thereto, said William L. B. Gibbs & William P. Jenney, under the firm-name of Gibbs & Jenney, were the owners of three-eighth parts of said vessel; that, on the 7th day of said February, said Gibbs & Jenney presented their petition to the Honorable Edmund H. Bennett, judge of probate and insolvency within and for said county, of which petition a copy is hereto annexed, marked Schedule A.

That thereupon, on said 7th day of February, 1861, said judge issued his warrant under his hand, directed to the sheriff of said county of Bristol, or either of his deputies; a copy of which warrant is hereto annexed, marked Schedule B.

That, afterwards, on the 20th day of said February, E. Terry, one of

the officers to whom said warrant was directed, and the officer to whom the same was delivered for execution, made his return thereto to the court of insolvency for said county, as directed by said warrant,
12 a copy of which return is hereto annexed, marked Schedule C.

That, on said 20th day of February, at said court of insolvency for said county, defendants William W. Crapo, George F. Tripp, and Joshua B. Tobey, were duly appointed assignees of the estate of said Gibbs and Jenney, and then and there accepted said trust, as will appear by Schedules D and E, hereto annexed.

That, afterwards, on said 20th day of February, in said court of insolvency, the said Edmund H. Bennett, judge as aforesaid, executed under his hand and under the seal of said court, and delivered to said assignees, being the grantees therein mentioned, a deed of assignment, of which a copy is hereunto annexed, marked F.

That William L. B. Gibbs, mentioned in the said several schedules, is the same person as William L. B. Gibbs, herein mentioned, and William P. Jenney, mentioned in the said several schedules, is the same person as William P. Jenney, herein mentioned.

That, on the 23d day of February and on the 6th day of March, A. D. 1861, and prior thereto, said Edmund Allen was the owner of one-eighth part of said vessel; that on the 14th day of said February, said Edmund Allen presented his petition to the Honorable Edmund H. Bennett, judge of probate and insolvency for said county of Bristol, and judge of the court of insolvency within and for said county, of which petition a copy is hereto annexed, marked Schedule G.

That, afterwards, on the 21st day of said February, said judge issued his warrant under his hand, directed to the sheriff of said county of Bristol, or either of his deputies; a copy of which is hereto annexed, marked Schedule H.

That, afterwards, on the 6th day of March, A. D. 1861, George R. Hurlbut, one of the officers to whom said warrant was directed, and the officer to whom the same was delivered for execution, made his return thereto to a court of insolvency for said county as directed by said warrant; a copy of which return is hereto annexed, marked Schedule I.

That, on said 6th day of March, at said court of insolvency, the
13 defendant George A. Shaw, Reuben Nye, and William W. Crapo were duly appointed assignees of the estate of said Edmund Allen, and then and there accepted said trust, as will appear by Schedule K, hereto annexed.

That, afterwards, on said 6th day of March, at said court of insolvency, the said Edmund H. Bennett, judge as aforesaid, executed under his hand and under the seal of said court, and delivered to said assignees, being the grantees therein mentioned, a deed of assignment, of which a copy is hereto annexed, marked Schedule L.

That Edmund Allen, mentioned in said several schedules, is the same person as Edmund Allen herein mentioned.

That, on said 9th, 20th, and 23d days of February, and said 6th day of March, said vessel was on the high seas, prosecuting her said voyage from said Baker's and Howland's Islands to said port of New York.

That the several allegations contained in the complaint herein, down to and including the words, "which execution still remains in the said sheriff's hands wholly unsatisfied," in the 10th folio of said complaint, are true.

It is further stipulated that the several schedules hereto annexed, and also Schedule A, annexed to the complaint herein, may be read in ev-

idence on the trial of this action with the same effect as the originals, of which they are copies, or copies duly certified under the act of Congress in such case provided, might be read in evidence.

It is further stipulated that the 118th chapter of the general statutes of Massachusetts, entitled "Of courts of insolvency," shall be considered as in evidence on the trial of this action, and may be referred to in the statute book.

It is further stipulated that, on the trial of this action, no objection shall be taken that the interests of the defendants in said vessel are or were several and not joint; and if the defendants shall establish their ownership at the time mentioned in Schedule A, annexed to the complaint, of some portion of the one half of said vessel attached, but not the whole, they shall be entitled to a pro-rata deduction from the amount of the valuation mentioned in said Schedule A.

EVARTS, SOUTHMAYD & CHOATE,
Plaintiff's Attorneys.
PIERREPONT, STANLEY & LANGDELL,
Defendants' Attorneys.

14 SCHEDULE A.

To the honorable the judge of the court of insolvency in and for the county of Bristol, in the Commonwealth of Massachusetts:

Respectfully represents—William L. B. Gibbs and William P. Jenney, both of Fairhaven, in said county, copartners, under the style and firm of Gibbs & Jenney—

That they are separately and jointly indebted in divers sums of money, amounting in the whole to not less than two hundred dollars, which they are unable to pay in full, and they wish to surrender all their joint and separate property for the benefit of their creditors, and to obtain their discharge from their said debts, according to the statutes in this behalf provided.

And they further represent that, at the time said debts from which they seek to be discharged were contracted, they were, and now are, inhabitants of said Commonwealth.

Wherefore, they pray that a warrant may be issued for taking possession of their joint and separate estate, and that such further proceedings may be had in the premises as the law in such cases prescribes.

Dated this seventh day of February, in the year of our Lord one thousand eight hundred and sixty-one.

W'M L. B. GIBBS.
W'M P. JENNEY.

SCHEDULE B.

COMMONWEALTH OF MASSACHUSETTS, *Bristol, ss:*

[L. S.] To the sheriff of said county of Bristol, or either of his deputies, greeting:

You are appointed messenger, and hereby commanded, as such, to take possession of all the estate, real and personal, of William L.
15 B. Gibbs and William P. Jenney, both of Fairhaven, in said county, co-partners, under the style of Gibbs & Jenney, insolvent debtors, excepting such as is by law exempted from attachment, and of all their deeds, books of account, and papers, and keep them safely until

the appointment of an assignee or assignees, at the first meeting of the creditors of said insolvent debtor.

And you are also required to give public notice, by advertisement, to be published twice in the newspapers called the Daily Evening Standard and the Daily Mercury, printed at New Bedford, in the county of Bristol, the first publication to be made forthwith.

First. That this warrant has issued.

Second. That the payment of any debts, and the delivery of any property belonging to said insolvent debtors, to them, or for their use, and the transfer of any property by them are forbidden by law.

Third. That a meeting of the creditors of said insolvent debtors will be held at the court of insolvency, to be holden at New Bedford, in said county of Bristol, on the twentieth day of February ins't, at eleven o'clock in the forenoon, for the proof of debts and the choice of an assignee or assignees.

You are also required to send written notice, within five days after the date hereof, to the creditors of said insolvent debtors named on their schedule of creditors, to be delivered to you by them within three days after the date hereof, of the time and place of said meeting.

And have you there this warrant, with your doings thereon.

In testimony whereof I have hereunto set my hand and caused the seal of the court of insolvency to be affixed, this 7th day of February, in the year of our Lord one thousand eight hundred and sixty-one.

EDMUND H. BENNETT,
Judge of Probate and Insolvency.

16 SCHEDULE C.

Officer's return.

BRISTOL, *ss:*

NEW BEDFORD, *Feb.* 20, *A. D.* 1861.

By virtue of the within warrant, I have taken possession of all the estate of the within-named insolvent debtors, except such as is by law exempted from attachment, and of all deeds, books of account, and papers, which have come to my knowledge. And I have given public notice of the issuing of the within warrant, of the requirements of law, and the order of court therein set forth, and of the other things therein prescribed, by advertisements published on two different days, inside, in the newspapers therein mentioned, the first publication of which notice was made on the ninth day of February, A. D. 1861.

I also, within five days after the date of the within warrant, sent written notice to the creditors of the within-named insolvent debtors named in the schedule herewith returned and delivered to me by said insolvent debtor, on the eighth day of February, A. D. 1861.

E. TERRY,
Deputy Sheriff, Messenger.

Service, $2.00; advertising, 3.00; notice to creditors, 8.50; custody of property, ; extra service, ; postage stamps, 2.05; attending court, 2.00—$17.55.

17 SCHEDULE D.

COMMONWEALTH OF MASSACHUSETTS, *Bristol, ss:*

Court of insolvency.

IN THE CASE OF GIBBS & JENNEY, insolvent debtors.

FEBRUARY 20TH, 1861.

To Charles S. Storrow, of Boston, George F. Tripp, of Fairhaven, and William W. Crapo, of New Bedford:

You are hereby notified that you have been duly appointed assignees of the estate of the said Gibbs & Jenney, of Fairhaven, in said county, insolvent debtors.

J. DAGGETT, *Register.*

FEBRUARY 20TH, 1861.

We hereby signify our acceptance of the trust of assignees of the estate of the above-named insolvent debtors.

WM W. CRAPO.
GEO F. TRIPP.

SCHEDULE E.

COMMONWEALTH OF MASSACHUSETTS, *Bristol, ss:*

Court of insolvency.

IN THE CASE OF GIBBS & JENNEY, of Fairhaven, in said county, insolvent debtors.

FEBRUARY, 20TH, 1861.

To Joshua B. Tobey:

You are hereby notified that you have been duly appointed assignee of the estate of the said Gibbs & Jenney, insolvent debtors.

J. DAGGETT, *Register.*

18 FEBRUARY 20TH, 1861.

I hereby signify my acceptance of the trust of assignee of the estate of the above-named insolvent debtors.

J. B. TOBEY.

SCHEDULE F.

COMMONWEALTH OF MASSACHUSETTS, *Bristol, ss:*

Court of insolvency.

IN THE CASE OF WILLIAM L. B. GIBBS AND William P. Jenney, of Fairhaven, in said county, insolvent debtors. Case No. 129.

Know all men by these presents, that whereas George F. Tripp, William W. Crapo, and Joshua B. Tobey, have been duly appointed assignees in said case:

Now, therefore, I, E. H. Bennett, esquire, judge of probate and insolvency in and for said county, and as such judge of the said court of insolvency, by virtue of the authority vested in me by the laws of said Commonwealth, do hereby convey and assign to the said assignees, all

the individual and partnership estate, real and personal, of the said Gibbs & Jenney, insolvent debtors, including all the property of which they were possessed, or which they were interested in, or entitled to on the ninth day of February, in the year one thousand eight hundred and sixty-one, excepting such as may be by law exempted from attachment, with all their deeds, books, and papers relating thereto:

To have and to hold, all the above-granted premises to the said George F. Tripp, W'm W. Crapo, and Joshua B. Tobey, their heirs, forever. In trust, nevertheless, for the uses and purposes with the powers and subject to the conditions and limitations set forth in the laws aforesaid.

In witness whereof I, the said judge, have hereunto set my hand and caused the seal of said court to be affixed on this twelfth day of February, in the year one thousand eight hundred and sixty-one.

[L. S.] EDMUND H. BENNETT,
Judge of Probate and Insolvency.

19 SCHEDULE G.

To the honorable the judge of the court of insolvency in and for the county of Bristol, in the Commonwealth of Massachusetts:

Respectfully represents Edmund Allen, of Fairhaven, in said county of Bristol, merchant.

That he is indebted in divers sums of money, amounting in the whole to not less than two hundred dollars, which he is unable to pay in full, and he wishes to surrender all his property for the benefit of his creditors, and to obtain his discharge from his said debts, according to the statutes in this behalf provided.

And he further represents that, at the time said debts, from which he seeks to be discharged, were contracted, he was and now is an inhabitant of said Commonwealth.

Wherefore he prays that a warrant may be issued for taking possession of his estate, and that such further proceedings may be had in the premises as the law in such cases prescribes.

Dated this fourteenth day of February, in the year of our Lord one thousand eight hundred and sixty-one.

EDMUND ALLEN.

SCHEDULE H.

COMMONWEALTH OF MASSACHUSETTS, *Bristol, ss:*

[L. S.] To the sheriff of said county of Bristol, or either of his deputies greeting:

You are appointed messenger, and hereby commanded as such to take possession of all the estate, real and personal, of Edmund Allen, of Fairhaven, in said county, merchant, insolvent debtor, excepting such as is by law exempted from attachment, and of all his deeds, books
20 of account, and papers, and keep them safely until the appointment of an assignee or assignees, at the first meeting of the creditors of said insolvent debtor.

And you are also required to give public notice by advertisements, to be published twice, inside, in the newspapers called the Daily Mercury and the Daily Evening Standard, printed at New Bedford, in the county of Bristol, the first publication to be made forthwith.

First. That this warrant has issued.

Second. That the payment of any debts, and the delivery of any prop-

erty belonging to said insolvent debtor, to him, or for his use, and the transfer of any property by him, are forbidden by law.

Third. That a meeting of the creditors of said insolvent debtor will be held at the court of insolvency to be holden at Taunton, in said county of Bristol, on the sixth day of March, at ten o'clock in the forenoon, for the proof of debts and the choice of an assignee or assignees.

You are also required to send written notice within five days after the date hereof, to the creditors of said insolvent debtor, named in his schedule of creditors, to be delivered to you by him within three days after the date hereof, of the time and place of said meeting.

And have you there this warrant, with your doings thereon.

In testimony whereof I have hereunto set my hand and caused the seal of the court of insolvency to be affixed this 21st day of February, in the year of our Lord one thousand eight hundred and sixty-one.

EDMUND H. BENNETT,
Judge of Probate and Insolvency.

21 SCHEDULE J.

Officer's return.

BRISTOL, *ss:*

MARCH 6, A. D. 1861.

By virtue of the within warrant, I have taken possession of all the estate of the within-named insolvent debtor, except such as is by law exempted from attachment, and all his deeds, books of account, and papers, which have come to my knowledge. And I have given public notice of the issuing of the within warrant, of the requirements of law and the order of the court therein set forth, and of the other things therein prescribed, by advertisements published on two different days, inside, in the newspaper therein mentioned; the first publication of which notice was made on the twenty-third day of February, A. D. 1861.

I also, within five days after the date of the within warrant, sent written notice to the creditors of the within-named insolvent debtor named on the schedule herewith returned and delivered to me by said insolvent debtor, on the twenty-fifth day of February, A. D. 1861.

Service, $2.00; advertising, 4.00; notice to creditors, 2.42; custody of property, extra service, 2.63—$11.05; attendance at court, 2.92—$13.97.

GEO. R. HURLBUT,
Deputy Sheriff, Messenger.

22 SCHEDULE K.

COMMONWEALTH OF MASSACHUSETTS, *Bristol, ss:*

Court of insolvency.

IN THE CASE OF EDMUND ALLEN, OF FAIRhaven, in said county, insolvent debtor.

MARCH 6TH, 1861.

To George A. Shaw, of Boston, Reuben Nye, of Fairhaven, William W. Crapo, of New Bedford:

You are hereby notified that you have been duly appointed assignee of the estate of Edmund Allen, aforesaid, insolvent debtor.

J. DAGGETT, *Register.*

MARCH 6TH, 1861.

We hereby signify our acceptance of the trust of assignees of the estate of the above-named insolvent debtor.

GEO. A. SHAW.
REUBEN NYE.
W'M W. CRAPO.

SCHEDULE L.

COMMONWEALTH OF MASSACHUSETTS, *Bristol, ss:*

Court of insolvency.

IN THE CASE OF EDMUND ALLEN, OF FAIRhaven, in said county, insolvent debtor. } Case No. 131.

Know all men by these presents, that whereas George A. Shaw, Reuben Nye, and William W. Crapo, have been duly appointed assignees in said case:

23 Now, therefore, I, E. H. Bennett, esquire, judge of probate and insolvency, in and for said county, and as such judge of the said court of insolvency, by virtue of the authority vested in me by the laws of said Commonwealth, do hereby convey and assign to the said assignee, all the estate, real and personal, of the said Edmund Allen, the insolvent debtor, including all the property of which he was possessed, or which he was interested in, or entitled to, on the twenty-third day of February, in the year one thousand eight hundred and sixty-one, excepting such as may be by law exempted from attachment, with all his deeds, books, and papers relating thereto:

To have and to hold all the above granted premises to the said Shaw, Nye, and Crapo, their heirs, forever; in trust, nevertheless, for the uses and purposes, with the powers and subject to the conditions and limitations set forth in the laws aforesaid.

In witness whereof I, the said judge, have hereunto set my hand and caused the seal of said court to be affixed, on this sixth day of March, in the year one thousand eight hundred and sixty-one.

[L. S.] EDMUND H. BENNETT,
Judge of Probate and Insolvency.

The plaintiff's counsel then called—

EDWARD MOTT ROBINSON, who, being sworn, testified as follows:

Q. You were a plaintiff in the original action against Gibbs, Jenney & Allen?

A. Yes, sir.

Q. When that action was commenced on the 24th of April, 1861, of what State and city were you a resident?

A. New York.

Q. How long had you been so?

A. About eleven months.

Q. State whether those are the notes sued upon in the original action, (showing witness notes.)

A. They are.

Q. You were the owner of them at the time the action was commenced?

24 A. Yes, sir.

The defendants' counsel admit the signatures to the notes, and that the endorser was duly charged.

On cross-examination by the defendants' counsel, the witness testified as follows:

Q. Where did you reside before you came to New York?

A. New Bedford, Mass.

Q. How long had you resided there?

A. Over twenty-four years.

Q. Please look at the note of June 21st, 1860, and state when and how you acquired it?

A. I cannot now say which I owned first.

Q. State in regard to both of them.

A. Well, I bought it of George A. Bourne, of New Bedford?

Q. One of them?

A. Yes, sir; I believe it is the one which is due first; I have no doubt of it, but I have no data to go by.

Q. Who is Mr. Bourne?

A. Mr. Bourne is a broker in New Bedford.

Q. Did you buy it of him as owner or broker?

A. I didn't ask him any questions about it. He offered me the note and I bought it.

Q. What did you pay for it?

(Objected to, and excluded by the court.)

Q. Can you give me the date when you purchased that note?

A. I cannot.

Q. Was it before it was due?

A. Yes, sir; I have no doubt upon that.

Q. Of whom did you purchase the other?

A. I suppose I am justified in answering this in an intelligible way; I I was one of the firm of Isaac Howland, jr. & Co., of New Bedford; that firm was dissolved in April, 1860; having bought this first note of Mr. Bourne, and knowing the ship Arctic was coming in here, I believed I could secure my debt on the note I then had; and, knowing also Isaac Howland, jr., & Co., of which firm I had been a member, and was interested in the assets of the firm, and am now, I wrote to my former partner, saying "Send me the note that you have." I was ten-twelfths owner of the note before I wrote the letter; I wrote to them, "Send me the note signed by Gibbs and Jenney, and charge it to my account," which they did. The note came here, and was sued in connection with the other, and the charge to me was rendered in the settlement of firm's account with me, which has been annually ever since; hence, it was in the account of 1860 and 1861, and was included in the balance that the firm owed me then, and now stands in my account as my property, bona fide, with which they have nothing to do.

Q. At what amount was it charged to you in the account?

A. Three thousand dollars.

Q. The face of it?

A. Yes, sir.

Q. Was it worth that amount at the time, in the market?

(Objected to by plaintiff's counsel, and excluded by the court.)

WITNESS. I am mistaken in the amount I owned; I should have said ten twenty-fourths.

Q. Did you believe it to be worth par?

(Objected to by plaintiff's counsel.)

Q. Was the paper of Gibbs and Jenney, endorsed by Edmund Allen, worth par in the market, or anywhere near it?

A. I don't believe it was worth par, but I don't know how much less; I didn't ask any question about it.

The witness being re-examined by the plaintiff's counsel, further testified as follows:

Q. When you wrote that letter, and received that note, that firm was largely indebted to you?

A. Yes, sir, and is now.

26 The plaintiff's counsel then read in evidence the deposition of WILLIAM W. CRAPO, taken under a commission, which was as follows:

First interrogatory. What is your name, age, residence, and occupation?

Answer to first interrogatory. William W. Crapo; age, thirty-three years; reside in New Bedford, county of Bristol, and State of Massachusetts; am an attorney at law.

Second interrogatory. Are you one of the persons named as assignees in the assignment made by Edmund H. Bennett, judge of probate and insolvency for the county of Bristol, in Massachusetts, to George A. Shaw, Reuben Nye, and William W. Crapo, of the estate of Edmund Allen, an insolvent, bearing date the sixth day of March, 1861; and also in the assignment of the same Bennett to George F. Tripp, William W. Crapo, and Joshua B. Tobey, of the estate of William L. B. Gibbs and William P. Jenney, bearing date the 20th day of February, 1861?

Answer to second interrogatory. Yes, I am an assignee in both cases.

Third interrogatory. Did you accept the said assignment, and act as trustee thereunder?

Answer to third interrogatory. I did.

Fourth interrogatory. Did the said assignees, at any time after the assignments were made, take possession of the ship Arctic, of Fairhaven, or any part thereof? If so, state when and where, and how, and from whom such possession was obtained by them?

Answer to fourth interrogatory. Upon the arrival of the Arctic in New York, I went there, and, acting as assignee in behalf of the estates of Gibbs & Jenney, and Edmund Allen, and as the attorney and agent of the other owners in the ship, I procured a dock for the

27 ship, and arranged for discharging the ship's cargo; the officers and crew were at this time on board. I also employed a shipkeeper to take charge of the property as soon as the vessel came to the wharf, and had such keeper on board the vessel all of the time until I sold her, in the month of October, A. D. 1861; I was then informed that some person representing the sheriff of New York County was put on board the vessel on her arrival in the outer harbor; such a person was there on board when I reached New York; the master of the ship reported to me on his arrival, and I gave the necessary orders, and took the custody of the property from him; none of the other assignees acted in the matter, as the business was confided to me.

Fifth interrogatory. Where were you and the said other assignee on the 30th day of April, 1861? Did you not, shortly after that day, visit New York City on behalf of the said assignees, for the purpose of taking possession of said ship? When first, after that day, were you in New York City? Did you there, on that occasion, do or cause to be done anything, and, if anything, what, in respect of said ship, or in respect of releasing her from the custody of the sheriff of the city and county of New York? State the dates of all such acts and proceedings.

Answer to the fifth interrogatory. I was in New Bedford, to the best of my knowledge; I don't know where the other assignees were; they live in Fairhaven, Boston, and Wareham. I left New Bedford on this business, May 2d, 1861, arriving in New York the morning of May 3d, 1861. What was done by me is stated in the next previous interrogatory; I consulted with my counsel, Stanley & Langdell, in regard to releasing the vessel.

Sixth interrogatory. When first was the ship Arctic in Massachusetts after the first of said assignments was made?

Answer to the sixth interrogatory. I sold the ship in New York. Charles Brewer, the purchaser, brought her to New Bedford, Massachusetts, in the month of October, A. D. 1861, as near as I remember.

28 Seventh interrogatory. Do you know of any other matter or thing which may tend to the advantage of the plaintiff in this cause? If so, state the same as fully as if you were thereunto specifically interrogated.

Answer to the seventh interrogatory. I know of nothing.

And thereupon the plaintiff's counsel rested the case, and the defendants also rested, without offering further testimony.

And thereupon his honor the judge, with the consent of the counsel for the respective parties, directed the jury to find their verdict for the plaintiff at the sum of three thousand dollars, the amount of the valuation, with interest from the date of the bond, to be assessed as damages, subject to the opinion of the court at general term.

The jury thereupon rendered their verdict for the plaintiff for the sum of three thousand dollars, and assessed his damages at the further sum of four hundred and twenty dollars.

EVARTS, SOUTHMAYD & CHOATE,
Attorneys for the Plaintiff.

29 At a general term of the supreme court, held in and for the county of New York, at the city hall, in the city of New York, on the second day of May, 1864:

Present, Hon. William H. Leonard, Hon. Josiah Sutherland, Hon. Thomas W. Clerke, justices.

JOHN KELLY, SHERIFF OF THE CITY AND COUNTY of New York,
vs.
WILLIAM W. CRAPO, GEO. F. TRIPP, JOSHUA B. Tobey, Reuben Nye, Geo. A. Shaw, John E. Williams, and Robert B. Minturn.

This cause having come on in its order on the calendar, on the 30th day of March last, to be heard upon the application by the plaintiff for judgment on the verdict directed in favor of said plaintiff, subject to the opinion of the court at general term, now, after hearing Joseph H. Choate, esq., of counsel for the plaintiff, in support of said application, and C. C. Langdell, esq., of counsel for the defendants, in opposition thereto—

It is ordered that said application be, and the same is hereby, denied, and that judgment be entered for the defendants, dismissing the complaint with costs.

[Copy.]

H. W. GENET, *Clerk.*

30 Supreme court, county of New York.

JOHN KELLY, SHERIFF OF THE CITY AND COUNTY of New York,
vs.
WILLIAM W. CRAPO, GEO. F. TRIPP, JOSHUA B. Tobey, Reuben Nye, Geo. A. Shaw, John E. Williams, and Robert B. Minturn.

Judgment, 8th June, 1864.

This action having been tried, on the 18th day of June, 1863, before his honor, Mr. Justice Gould, and a jury, and a verdict having been directed in favor of the plaintiff, subject to the opinion of the court at general term, and the cause having come on before said general term for a hearing upon the plaintiff's application for judgment upon said verdict, and the decision of the court having been filed, whereby said application is denied and judgment directed to be entered for the defendants, dismissing the complaint with costs:

Now, on motion of Pierrepont, Stanley and Langdell, attorneys for the defendants, it is hereby ordered, adjudged, and decreed that the said complaint be, and the same is hereby, dismissed. And it is further ordered, that the said defendants recover of the said plaintiff the sum of two hundred and ten dollars and fifty cents, costs and disbursements in said action.

H. W. GENET, *Clerk.*

31 At a general term of the supreme court of the State of New York, held at the city hall, in the city of New York, on the eighth day of June, 1864.

Present, Hon. W'm H. Leonard, Josiah Sutherland, Thomas W. Clerke, justices.

JOHN KELLY, SHERIFF OF THE CITY AND county of New York,
vs.
WILLIAM W. CRAPO AND OTHERS.

The questions or conclusions of law and statement of the facts on which they arose, prepared by and under the direction of the court at general term, for the purposes of a review in the court of appeals.

The court determines as matters of law that, at the time of the attachment of the one-half of the ship Arctic, as stated in the complaint, and at the time of the issuing of the warrant of attachment mentioned in the complaint, the defendants, other than the defendants Williams and Minturn, were the owners of the property so attached, and entitled to claim and take the same from the sheriff, the plaintiff.

And the facts upon which this determination arises are the facts stated and admitted in the agreed statement of facts put in evidence upon the trial, and the further facts that, at the time of the commencement of the action in which said attachment was issued, Gibbs, Jenney, and Allen, the defendants therein, resided at Fairhaven, in Massachusetts, and were justly indebted to Edward Mott Robinson, the plaintiff in said action, in the amount named in said warrant of attachment, for
32 the recovery of which said action was brought, and that the pro-

ceedings in that attachment and in said action were in all respects conformable to the provisions of the code in that behalf.

That, at the time of the commencement of his said action, and for about eleven months prior thereto, the said Robinson was and had been a resident of the State of New York; that, for twenty-four years and upwards, prior to his becoming a resident of New York, he was a resident of New Bedford, Massachusetts; that the defendant Crapo, on behalf of all the defendants, assignees of Gibbs, Jenney, and Allen, all of whom resided in Massachusetts, having heard of the arrival of the ship Arctic, at New York, came from Massachusetts, on the 2d of May, 1860, to New York, for the purpose of taking possession of said vessel; that he arrived in New York, on the 3d of May, and then and there found the said vessel in the custody of the sheriff, under said attachment; that the said vessel remained in the port of New York until after she was released from said attachment in June, 1861.

That said action, in which said attachment issued, was brought on two promissory notes for $3,000 each, made by said Gibbs and Jenney, and endorsed by said Allen, dated at said Fairhaven, on the 21st day of June, 1860, and the 3d day of September, 1860, respectively, and payable five months after date; that one of said notes was purchased by said Robinson, in said New Bedford, before the same became due, and the other was acquired by Isaac Howland, jr., & Co., of said New Bedford, of which firm said Robinson had formerly been a member; that, upon said Robinson learning that the said ship Arctic was coming to New York, the said Isaac Howland, jr., & Company, by the direction of said Robinson, sent to the latter the last-mentioned note and charged him with the face thereof in account, they being then indebted to the said Robinson, and the latter being already owner of ten twenty-fourths of said note, as one of the assets of said old firm.

33 New York supreme court, city and county of New York.

JOHN KELLY, SHERIFF, &c.
vs.
WILLIAM W. CRAPO, ET AL.

Please to take notice that the plaintiff, respondent, hereby appeals to the court of appeals from the judgment of the general term of this court, entered in the clerk's office of the city and county of New York, in this action, on the eighth day of June, 1864, in favor of the defendants, against the plaintiff, for the sum of two hundred and ten dollars and fifty cents, costs and disbursements; and also reversing the judgment heretofore entered in said action.

Dated New York, August 23d, 1864.

Yours, &c.,

EVARTS, SOUTHMAYD & CHOATE,
Attorneys for Plaintiff.

To the CLERK of the city and county of New York, and
To PIERREPONT, STANLEY & LANGDELL, esqs.,
Attorneys for the Defendants, &c.

STATE OF NEW YORK,
City and Count' of New York:

I, Henry W. Genet, clerk of the city and county of New York, also clerk of the supreme court of said State for the city and county of New York, do hereby certify that the foregoing consist of certified copies of

the judgment-roll, notice of appeal, and order of the general term in this case which remain on file in my office.

In witness whereof I have hereunto subscribed my name and affixed my official seal this fifteenth day of December, 1864.

[SEAL.] H. W. GENET, *Clerk.*

34 JOHN KELLY, SHERIFF OF THE CITY AND county of New York,
vs.
WILLIAM W. CRAPO, GEO. F. TRIPP, JOSHUA B. TOBEY, REUBEN NYE, GEO. A. SHAW, JOHN E. WILLIAMS, and ROBERT B. MINTURN. } At general term.

Hon. William H. Leonard, Hon. Josiah Sutherland, Hon. Thomas W. Clerke, justices.

CLERKE, *J.*

There seems to be no dispute as to the facts, and very little as to the law of this case.

The claim of the defendants was founded exclusively on two assignments, dated respectively 12th February, and 6th March, 1861, under the insolvent proceedings; and no assignment was voluntarily made to them by the insolvents themselves. The said vessel, (called the Arctic,) was an American ship, and duly registered as such in the said port, and at the several dates when said assignments were executed; and when they took effect she was on the high seas, prosecuting a voyage from Baker's and Howland's Islands, in the Pacific Ocean, to the port of New York, where she arrived on the 30th April, 1861; on which she was attached by the plaintiff, as sheriff. It is not, I believe, disputed that it is now the settled law of the State, that a prior assignment in bankruptcy, or under insolvent proceedings in a foreign nation, or in another State of this Union, will not be permitted to prevail against a subsequent attachment of bankrupt's or insolvent's effects by creditors residing here. Neither is it disputed that such an assignment will be regarded by the courts of this State as operating to transfer all the
35 property of the bankrupt or insolvent, situated, at the time of the assignment, within the territory, or being under the dominion of the nation or State where the proceedings were instituted. In the United Kingdom of Great Britain and Ireland, if the vessel was a registered ship of that nation, the assignment would have transferred her to the assignees, although she was, as in the present case, on the high seas at the time.

But it is maintained by the counsel for the plaintiff that Massachusetts has no jurisdiction on the high seas; that the ships belonging to her ports are only known when they have left her ports as American, and not as Massachusetts vessels, and that therefore the laws of Massachusetts should not be regarded as operative upon them. As Massachusetts cannot be said to have any jurisdiction over them, they should not be within the operations of her bankrupt or insolvent laws.

Undoubtedly, no single State of this Union has any jurisdiction in this sense beyond territorial limits. It is, indeed, in a very high and very important sense, sovereign and independent. It is, in short, a nation, in relation to its domestic polity and laws, comprehending the widest and highest sphere of governmental action; it is not a nation in relation to foreign governments, or for international purposes. If any crime was committed upon the vessel in question, while she was on the

high seas, the perpetrators of it would be answerable for it to the laws of the United States, and not to those of Massachusetts, or if her officers committed any wrong affecting the vessels or other property of any foreign nation, or if they suffered any wrong from the authorities of a foreign nation, the Government of the United States, and not of Massachusetts, would be the instrumentality by which satisfaction would be afforded in the one case, and redress demanded in the other.

Nevertheless, although for the more convenient and efficient administration of justice, and for the purpose of all intercommunications and transactions with foreign governments, the vessel is properly
36 called an American ship, she remains Massachusetts property, under the command and the control of citizens of Massachusetts, and a portion of the general wealth of that State, subject to her laws. Strictly speaking, as property, she should be deemed more a portion of the wealth of the State, than of the Union, and as such property, more subject to the jurisdiction and laws of the former than the latter.

The officers and crew, indeed, are, as we have seen, subject, as to their conduct while on the high seas, to the criminal laws of the Union, and the flag of the Union betokens her national character. But this does not deprive Massachusetts of precisely the same control over her as property, which the laws of that State allowed and prescribed before she left the port, from which she took her departure on her voyage to the Pacific Ocean.

Perhaps, however, these observations and this course of inquiry have little or no weight in aiding a correct conclusion on this occasion.

After all, this is a mere question of comity between sovereign States. We are under no obligations to recognize the transference in invitum of any property, made under the laws of other jurisdictions. We could, if we thought proper, disregard all such assignments and resolve that they should have no efficacy in this State, whether the property was or was not situated in their territory, or under the control or jurisdiction of the State or nation in which the assignment was made. But we have chosen thus far to give a preference to the claims of creditors of the bankrupt or insolvent, who are citizens of this State, in respect to property actually here. Is not this sufficient? Shall we extend this preference in respect to property not within our jurisdiction, at the period of the assignment, because it was not actually within the territorial limits of the other State, although virtually under the dominion of her laws as property? Shall we take advantage of the mere fact that it happened to be beyond her territorial limits at that period, although not within our own, and in a case presenting no substantial ground of distinction, refuse
37 to recognize her jurisdiction? I do not think this would be generous, or courteous, even on our part. That comity which should exist, and be liberally practiced between all civilized nations, and more especially between sister States, forbids that we should go any farther than we have already gone in cases of this description. The line of demarcation, in relation to this subject, should be between property actually within our limits at the time of the assignment in insolvency or bankruptcy, and property not actually within our limits.

There is a good reason for sustaining the preference of creditors resident in our State in respect to property situated within its limits at the time of the assignment. Comity towards other sovereignties does not require of us to go so far as to deny or ignore such a preference; for it may, with considerable plausibility, be assumed that the credit was obtained in this State in consequence of the debtors having property here.

At least it may be assumed that this was some inducement to the per-

son who gave the credit; at all events, there is nothing grasping, nothing inconsistent with the comity in retaining the property of the debtor situated here at the time of the act of bankruptcy or insolvency for the benefit of the creditors residing here. But, beyond this, I repeat, it would be both discourteous towards a sister State and incompatible with our own dignity to give the preference any greater effect, and take advantage of the fact, that a ship belonging to Massachusetts was prosecuting her voyage on distant seas, and insisting that she could not be deemed a Massachusetts ship because, under the Federal compact between Massachusetts and her sister States she had not a Massachusetts but an American flag at her mizzen-yard mast.

The defendants claim the property attached as assignees duly appointed in insolvent proceedings in Massachusetts, in which Gibbs, Jenney, & Allen were declared insolvent, and that these latter, at the time of taking proceedings, were the owners of the property attached.

38 The vessel belonged to the port of Fairhaven, in Massachusetts, and was there registered, as to one-half, in their names, being the interest attached here.

Whatever Massachusetts may have done in respect to *to* the insolvent laws of other States, her conduct is no reason why we should imitate her discourtesy or illiberality.

In the administration of our laws, if we had only to do with Massachusetts, we may be justified in retaliating; but as we have to accept general rules, we must shape our course according to the broad dictates of comity and liberality towards all sister States alike. In conformity with these considerations I am of opinion that there should be a judgment dismissing the complaint, with costs.

LEONARD, *J.*

The rule of law that transfers of property under foreign, insolvent, or bankrupt proceedings, are void as to domestic creditors, applies only to property within the State at the time of the transfer.

The property seized by the sheriff in this case was on the high seas at the time of the insolvent proceedings in Massachusetts. If the vessel first reached a port there or in New Jersey, the principle referred to could not be applied to maintain the plaintiff's case. I am unable to perceive any rule for holding that the transfer was inoperative while the vessel was not in any port. It would be an unreasonable extension of a severe rule of law to hold the transfer void or inoperative under such circumstances.

In the case of Moore vs. Willett, sheriff, (35 Barb. R., 560,) Judge Ingraham referred to the fact that the vessel was on the high seas as affording an additional reason for sustaining the title of an assignee under a voluntary assignment for the benefit of creditors made in North Carolina, containing provisions which were lawful there, but against the policy of the law as adjudged in the courts of New York. The fact referred to did not control the decision of that case, but the reason is fully applicable here, and ought, I think, to be controlling.

I concur in the opinion of Judge Clerke.

39 SUTHERLAND, *J.*

I dissent. No doubt the statutory or involuntary bankrupt proceedings passed the title to the property, as between the bankrupt firm and the assignees; but I cannot see why the well-settled principle, that the courts of this State will not recognize and give effect to such a proceeding as against New York creditors, ought not to control our de-

cision in this case. No matter where the vessel was when the statutory assignment was made, she came here subsequently, and I think the New York creditors should have the benefit of the well-settled principle referred to.

Judgment dismissing complaint.

40 At a special term of the supreme court held at the court-house in the city of New York on the 1st day of August, 1871.

Present, Hon. Albert Cardozo, justice.

JOHN KELLY, SHERIFF OF THE CITY & COUNTY of New York,
against
WILLIAM W. CRAPO, GEORGE F. TRIPP, JOSHUA B. Tobey, Reuben Nye, George A. Shaw, John E. Williams, and Robert B. Minturn, John W. Minturn and Thomas Charles Baring, executors of the last will & testament of Robert B. Minturn, deceased.

Upon reading, and filing the stipulation to that effect of Stanley, Langdell and Brown, attorneys for the defendants in the above-
41 entitled action, and upon motion of Evarts, Southmayd & Choate, attorneys for the plaintiff in said action, it is ordered that the said action be, and the same is hereby, revived and continued in the name of Gerard C. Tobey as administrator of the goods, effects, and credits which were of Joshua B. Tobey, defendant, deceased, in place of the said Joshua B. Tobey, and without prejudice to the proceedings had in said action.

(Endorsed:) "Filed Aug't 1, 1871."

42 New York supreme court, city and county of New York.

JOHN KELLY, SHERIFF OF THE CITY & COUNTY of New York,
against
WILLIAM W. CRAPO, GEORGE F. TRIPP, JOSHUA B. Tobey, Reuben Nye, George A. Shaw, John E. Williams, & Robert L. Minturn, John W. Minturn, and Thomas Charles Baring, executors of the last will and testament of Robert B. Minturn, deceased.

The defendant Joshua B. Tobey, having died intestate, since the commencement of this action, and Gerard C. Tobey having been appointed administrator of the goods, effects, and credits which were of the said Joshua B. Tobey, it is hereby stipulated that the said action be
43 revived and continued in the name of the said Gerard C. Tobey, as such administrator, in place of the said Joshua B. Tobey, defendant, deceased, and without prejudice to the proceedings had in said action.

New York, Aug't 1, 1871.

STANLEY, LANGDELL & BROWN,
Att'ys for Def'ts.

44 At a special term of the supreme court of the State of New York, held at the county court-house in the city of New York, on the 24th day of June, one thousand eight hundred and seventy-one.

Present, Hon. Geo. G. Barnard, justice.

JOHN KELLY, SHERIFF OF THE CITY & COUNTY of New York,
against
WILLIAM W. CRAPO, GEORGE F. TRIPP, Joshua B. Tobey, Reuben Nye, George A. Shaw, John E. Williams, and Robert B. Minturn, John W. Minturn, and Thomas Charles Baring, executors of the last will and testament of Robert B. Minturn, deceased.

Upon reading and filing the remittitur in this action from the court of appeals, and, on motion of Evarts, Southmayd & Choate,
45 plaintiff's attorneys, it is ordered that the judgment of the court of appeals in this action be, and the same hereby is, made the judgment of this court. And it is further ordered that the judgment of the supreme court appealed from in this action be, and the same hereby is, reversed, amended, and altogether held for nothing, and that judgment be entered for the plaintiff on the verdict rendered June 18, 1863, with costs.

(Endorsed :) "Filed June 24, 1871."

46 *Judgment, Aug.* 3, 1871.

Supreme court, city and county of New York.

JOHN KELLY, SHERIFF OF THE CITY & COUNTY of New York,
against
WILLIAM W. CRAPO, GEORGE F. TRIPP, GERARD C. Tobey, adm'or of the goods, effects and credits which were of Joshua B. Tobey, deceased; Reuben Nye, George A. Shaw, John E. Williams, & Robert B. Minturn, John W. Minturn, and Thomas Charles Baring, executors of the last will & testament of Robert B. Minturn, deceased.

John Kelly, sheriff of the city & county of New York, the above-named plaintiff, having appealed to the court of appeals from the judgment entered in the above-entitled action, bearing date on the 8th
47 day of June, 1864, dismissing the complaint; and for and pending such appeal, Robert B. Minturn, one of the defendants therein, having died, and the said action having been revived and continued against Robert B. Minturn, John W. Minturn, and Thomas Charles Baring, executors of the last will and testament of said Robert B. Minturn, deceased, and the judgment above-mentioned having been reversed by the court of appeals, and the said court of appeals having ordered that judgment be entered upon the verdict of the jury heretofore rendered herein, and having remitted the said cause into the supreme court of the State of New York before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according

to law, and the remittitur from the court of appeals having been heretofore filed in this court, and by order of this court thereupon
48 duly entered, said judgment of the court of appeals in this action having been made the judgment of this court, and this court having accordingly ordered that judgment be entered upon the said verdict; and Joshua B. Tobey, one of the defendants, having in the meantime departed this life, and the said action, by order of this court duly entered, having been revived and continued against Gerard C. Tobey, administrator of the goods, effects, which were of the said Joshua B. Tobey, deceased, and the costs of the said plaintiff having been adjusted at the amount hereinafter in that behalf mentioned: Now, on motion of Evarts, Southmayd and Choate, attorneys, for the said plaintiff, it is ordered, adjudged, and decreed that the said judgment, bearing date 8th June, 1864, be, and the same is hereby, reversed; and it is further
49 ordered, adjudged, and decreed that John Kelly, sheriff of the city and county of New York, the plaintiff above-named, do recover of William W. Crapo, George F. Tripp, Gerard C. Tobey, administrator of the goods, effects, and credits which were of Joshua B. Tobey, deceased; Reuben Nye, George A. Shaw, John E. Williams, and Robert B. Minturn, John W. Minturn, and Thomas Charles Baring, executors of the last will and testament of Robert B. Minturn, deceased, defendants above-named, three thousand four hundred and twenty dollars, the amount of said verdict of the jury damages, and twenty-nine hundred & sixty-three dollars and two cents, his costs and disbursements herein, amounting in all to the sum of six thousand three hundred and eighty-three dollars and two cents; and that plaintiff have execution therefor.

(Endorsed:) "Filed Aug't 3, 1871, at 1 h. & 5 m."

50 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the judges of the court of appeals of the State of New York, and to the judges of the supreme court of the State of New York, greeting:

Whereas on the record and proceedings, as also on the rendition of the judgment of a plea which is in the said court of appeals before you or some of you, being the highest court of law and equity of said State in which a decision could be had in the said suit between John Kelly, sheriff of the city and county of New York, and William W. Crapo, George F. Tripp, Joshua B. Tobey, Reuben Nye, George A. Shaw, John E. Williams, and Robert B. Minturn, wherein was drawn in question the validity of a statute of the State of Massachusetts, and the decis-
51 ion was against its validity, and wherein was drawn in question the construction of section one of the fourth article of the Constitution of the United States, and the decision was against the title set up and claimed under said section of the Constitution and under the said statute of Massachusetts, a manifest error hath appeared, to the great damage of the said William W. Crapo, George F. Tripp, Joshua B. Tobey, Reuben Nye, George A. Shaw, John E. Williams, and Robert B. Minturn as by their complaint appears: We, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record & proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the first Mon-
52 day of December next, in the said Supreme Court then and there

to be held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon'ble Salmon P. Chase, Chief Justice of the said Supreme Court, the seventh day of August, in the year of our Lord one thousand eight hundred and seventy-one.

KENNETH G. WHITE,
Clerk of the United States of America
for the Southern District of New York in the Second Circuit.

(Endorsed:)
"Aug't 7th, 1871. Within writ allowed.

S. NELSON."

"And filed Aug't 16, 1871."

53 Supreme Court of the United States.

JOHN KELLY, SHERIFF OF THE CITY AND COUNTY OF NEW YORK,
vs.
WILLIAM W. CRAPO, GEORGE F. TRIPP, Joshua B. Tobey, Reuben Nye, George A. Shaw, John E. Williams, & Robert Minturn.

Know all men by these presents that we, Thomas G. Hunt, of the city of New York, and William A. Brown, of the city of Brooklyn, State of New York, are held and firmly bound unto John Kelly, sheriff of the city and county of New York, in the sum of five thousand dollars, to be paid to the said John Kelly, sheriff, &c., his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs,
54 executors, and administrators, firmly by these presents, sealed with our seals, dated this 20th day of July, 1871.

Whereas the above-named William W. Crapo, George F. Tripp, Joshua B. Toby, Reuben Nye, George A. Shaw, John E. Williams, and Robert B. Minturn, have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the court of appeals of the State of New York:

Now, therefore, the condition of this obligation is such, that if the above-named William W. Crapo, George T. Tripp, Joshua B. Tobey, Reuben Nye, George A. Shaw, John E Williams, and Robert B. Minturn, shall prosecute their said writ of error to effect, & answer all costs and damages it they shall fail to make good their plea, then this obligation to be void; otherwise to remain in full force and virtue.

THO'S G. HUNT. [SEAL.]
W'M A. BROWN. [SEAL.]

Sealed and delivered in presence of—
MELVIN BROWN.

55 CITY AND COUNTY OF NEW YORK, *ss:*

Thomas G. Hunt, one of the subscribers to the foregoing undertaking or bond, being duly sworn, says that he is a resident and freeholder

within the State, and is worth the sum of ten thousand dollars over and above all his debts and liabilities, and besides property by law exempt from execution.

THO'S G. HUNT.

Sworn to before me this July 20th, 1871.

MELVIN BROWN,
Notary Public N. Y. City & Co.

CITY AND COUNTY OF NEW YORK, *ss:*

William A. Brown, one of the subscribers to the foregoing bond or undertaking, being duly sworn, says that he is a resident and householder within this State, and is worth the sum of five hundred dollars over and above all his debts & liabillties and besides property by law exempt from execution.

W'M A. BROWN.

Sworn to before me this July 20, 1871.

MELVIN BROWN,
Notary Public N. Y. City & Co.

56 CITY AND COUNTY OF NEW YORK, *ss:*

On this 20th day of July, 1871, before me personally appeared Thomas G. Hunt and William A. Brown, both to me known and known to me to be the same individuals described in and who executed the foregoing bond or undertaking, and severally acknowledged that they executed the same.

MELVIN BROWN,
Notary Public N. Y. City & Co.

(Endorsed:) "Filed Aug. 16, 1871."
(Also endorsed:)
"Approved this seventh day of August, 1871.

"S. NELSON."

57 To the Hon'ble Samuel Nelson, justice of the Supreme Court of the United States:

The petition of William W. Crapo, George F. Tripp, Joshua B. Tobey, Reuben Nye, George A. Shaw, John E. Williams, and Robert B. Minturn, respectfully shows:

That, heretofore, and about the 15th day of November, 1861, an action was brought by John Kelly, sheriff of the city and county of New York, against your petitioners, in the supreme court of the State of New York, triable in the county of New York, and an appeal was taken from a final judgment rendered therein to the court of appeals for the State of New York, where a final judgment was rendered therein at the February term, 1871, and the proceedings and record therein have been remitted to the said supreme court, and filed in the office of the clerk of said court at the city of New York, in the 1st judicial district of the State
58 of New York; that the amount involved in said suit exceeded two thousand dollars in value; that in said suit there was drawn in question the validity of a statute of the State of Massachusetts, and the decision was against its validity; and there was drawn in question the construction of section one of the 4th article of the Constitution of the United States, and also the construction of a statute of the United

States, to wit, the act of March 27, 1804, and the effect thereof, and the decision was against the title set up and claimed under said section and said statute of the United States, to wit, the defend'ts claimed title to the ship Arctic, under a statute of Massachusetts, and in pursuance of a judgment, decree, assignment, and judicial proceeding of the court of insolvency, in and for the county of Bristol, in the State of Massachusetts, transferring the title of said ship to your petitioners, and under section one and article four of the Constitution of the United
59 States, and the act of Congress of March 27, 1804.

That the court below decided in favor of your petitioners, and on the first argument in the court of appeals the court were divided and ordered a re-argument.

Wherefore your petitioners pray that said writ of error may be allowed, in order that said matters may be enquired into and justice be done in the premises.

WM W. CRAPO,
For the Petitioners.

STANLEY, LANGDELL & BROWN,
Attorneys for the Petitioners.

COUNTY OF BRISTOL, *State of Massachusetts:*

William W. Crapo, being duly sworn, says that he is one of the petitioners and has charge of this case for the other petitioners; that he has read the foregoing petition, and believes the same to be true.

Sworn to before me this 26th day of July, 1871.

WENDELL H. COBB,
Commissioner of Deeds for the State of New York.

(Endorsed:) "Filed Aug't 16, 1871."

60 UNITED STATES OF AMERICA:

To John Kelly, sheriff of the city and county of the State of New York, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the city of Washington, on the 1st Monday of December next, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of New York at the city of New York, wherein William W. Crapo, George F. Tripp, Arthur B. Tobey, Reuben Nye, George A. Shaw, John E. Williams, and Robert B. Minturn are plaintiffs in error, and you are defendant in error, *and you are defendant in error*, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be cancelled, and speedy justice be done to the parties in that behalf.

Witness the Hon'ble Samuel Nelson, justice of the Supreme Court of the United States, at Washington, this 7th day of
61 August, one thousand eight hundred and seventy-one.

S. NELSON.

62 STATE OF NEW YORK,
City and County of New York, ss:

The answer of the justices of the supreme court of the State of New York for the first judicial district in the within writ mentioned.

The record and proceedings whereof mention in within made, with all things touching or in anywise concerning the same, are respectfully certi-

fied to the judges of the Supreme Court of the United States, as within commanded.

In witness whereof I have hereunto subscribed my name and affixed the official seal of the said court this 9th day of September, A. D. 1871.

[SEAL.] CHA'S E. LOEW,
Clk of the Supreme Court, First Judicial District.

63 Supreme Court of the United States, of December term, in the year of our Lord one thousand eight hundred and seventy-one.

WILLIAM W. CRAPO, GEORGE F. TRIPP; GERARD C. Tobey, administrator of the goods, effects, and credits, which were of Joshua B. Tobey, deceased; Reuben Nye, George A. Shaw, John E. Williams, Robert B. Minturn, John W. Minturn, and Thomas Charles Baring, executors of the last will and testament of Robert B. Minturn, deceased, plaintiffs in error.

vs.

JOHN KELLY, SHERIFF OF THE CITY AND COUNTY of New York, defendant in error.

Afterwards, to wit, on the first Monday of December, in the same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said William W. Crapo, George F. Tripp; Gerard C. Tobey, administrator of the
64 goods, effects, and credits, which were of Joshua B. Tobey, deceased; Reuben Nye, George A. Shaw, John E. Williams; and Robert B. Minturn, John W. Minturn, and Thomas Charles Baring, executors of the last will and testament of Robert B. Minturn, deceased, by Stanley & Brown, their attorneys, and say that in the record and proceedings aforesaid there is manifest error in this, to wit: That the court of appeals of the State of New York held that no interest in or part of the title to the ship Arctic while on the high seas, passed by virtue of the judgment and proceedings of the court of probate and insolvency of the Commonwealth of Massachusetts to the assignees in said proceedings named; and further, in this, that, by said court of appeals such full faith, credit, and effect was not given to the statute of the State of Massachusetts within referred to, nor to the judgment or decree or assignment or judicial proceedings, or records of said court of insolvency, as they were entitled to, and as they have by law in the courts of said State of Massachusetts; and the said plaintiffs in
65 error pray that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that they may be restored to all things which they have lost by occasion of the said judgment.

STANLEY & BROWN,
Attorneys for Plaintiffs in Error.

(Indorsed:) Supreme Court of the United States. William W. Crapo and others, ag'st John Kelly, sheriff, &c. Assignment of errors. Stanley & Brown, att'ys for pl'ffs in error. X'd.

(Indorsement on cover:) No. 386. William W. Crapo, Geo. F. Tripp, Joshua B. Tobey, Reuben Nye, George A. Shaw, John E. Williams, Robert Minturn, pl'ffs in error, vs. John Kelly, sheriff of the city and County of New York. Remittitur. New York sup. court. Filed 18th November, 1871.

U. S. Supreme Court.

JOHN KELLY, Sheriff of the City and County of New York,
Defendant in Error,

agst.

WILLIAM W. CRAPO AND OTHERS,
Plaintiffs in Error.

Statement and Points for Plaintiffs in Error.

The action below was brought upon a bond given pursuant to 2 R. S. of New York (1st Ed., p. 5, sec. 14), for the purpose of procuring the discharge from an attachment of an undivided half of a certain ship or vessel called the *Arctic* (fols. 3–4).

The attachment was issued on the 24th of April, 1861, pursuant to the provisions of the Code of Procedure of the State of New York, in an action pending in the Supreme Court, in which one Edward Mott Robinson was plaintiff, and William L. B. Gibbs, William Jenney and Edmund Allen were defendants;

and an undivided half of said vessel was seized under said attachment on the 30th of said April, as the property of said defendants (fols. 3–13).

Afterwards, on the application of four of the defendants in this action, who claimed to be the owners thereof, said undivided half of said vessel was valued, pursuant to 2 R. S. (1st Ed.,) p. 5, § 13, at the sum of $3,000; whereupon said claimants gave the bond in question for the amount of such valuation, and the vessel was discharged from the attachment (fols. 5–13).

The condition of the bond was, that in a suit to be brought thereon, the said claimants should establish that they were the owners of said undivided half of said vessel, at the time of said seizure, or in default thereof should pay the full amount of said valuation to the Sheriff of the county of New York, to be held and disposed of by him under said attachment (fol. 6). Accordingly, the defendants allege in their answer that said claimants were such owners, and upon that allegation arises the only question in the case.

It appears that on the 9th day of February, 1861, and prior thereto, Gibbs and Jenney, two of the defendants in the attachment suit, owned three-fourths of said undivided half of said vessel (fol. 11), and that on the 23d day of February, 1861, and prior thereto, Edmund Allen, the other defendant in said attachment suit, owned the other one-fourth of said undivided half (fol. 12); that said Gibbs, Jenney & Allen, at the several times herein mentioned, were all citizens of Massachusetts, and resided in Fairhaven, in the county of Bristol, in the said State (fol. 11); that on the 7th day of February, 1861, Gibbs and Jenney petitioned for the benefit of the insolvent laws of Massachusetts (fol. 11); that thereupon such proceedings were had that on the 20th day of February, 1861, Crapo, Tripp and Tobey, three of the defendants in this suit, were duly appointed assignees of the estate of said Gibbs and Jenney, and an assignment of all the property, real and personal, which belonged to said Gibbs and Jen-

ney, on the 9th day of said February, was duly executed and delivered by the Judge of Insolvency to said assignees (fols. 12–13); that on the 14th day of February, 1861, said Edmund Allen petitioned for the benefit of said insolvent laws (fol. 12), that thereupon such proceedings were had that on the 6th day of March, 1861, Crapo, Nye and Shaw, three of the defendants in this suit, were duly appointed assignees of the estate of said Allen, and an assignment of all the property, real and personal, which belonged to him on the 23d day of February, 1859, was duly executed and delivered by the Judge of Insolvency to said assignees (fol. 12).

It further appears that said ship *Arctic*, at the several times herein mentioned, was an American vessel, and duly registered as such in the port of Fairhaven, in the district of New Bedford, and Commonwealth of Massachusetts, that being the port where said vessel belonged (fol. 10); that at the several dates when said assignments were executed and when they took effect, said vessel was on the high seas, prosecuting a voyage from Baker's and Howland's Islands, in the Pacific Ocean, to the port of New York (fol. 11), where she arrived on the 30th day of April following, and was seized on the same day, as before stated. (Fol. 32.)

On the next day but one after the arrival of the vessel, Mr. Crapo, one of the assignees, came to New York, and received possession of the vessel from the master, subject to the possession of the Sheriff, who then had a man on board. (Fols. 26–28, 32.)

It further appears that Edward Mott Robinson, the plaintiff in the attachment suit, had resided in New York about eleven months when said suit was commenced (fols. 24, 32); that previous to that time, and for more than twenty-four years, he had resided in New Bedford, Massachusetts, and was a member of the firm of Isaac Howland, Jr. & Co., of which he owned nearly one-half the assets (fols. 24, 25); that his interest in the property of said firm still continued at

the time of the trial (fols. 25, 32); that said attachment suit was brought on two promissory notes, made and negotiated in Fairhaven, Massachusetts, where the makers, Gibbs & Jenney, and the endorser, Edmund Allen, resided (fol. 32); that Robinson purchased one of said notes of a broker in New Bedford, several months before said attachment suit was commenced (fol. 24); that the other of said notes was owned by Robinson's said firm of Isaac Howland, Jr. & Co., and was procured by him for the express purpose of collecting it by means of said attachment suit, instead of sharing equally with other creditors under the insolvent laws of Massachusetts. (Fols. 25–32.)

Upon the foregoing facts, a verdict was taken at the Circuit for the plaintiff by consent, subject to the opinion of the Court at General Term (fol. 30.)

The plaintiff below, the Sheriff, having accordingly applied for judgment on the verdict, the application was denied, and the judgment rendered for defendants on the ground that by the judicial proceedings in Massachusetts the title to the *Arctic* passed to the plaintiffs in error. On the first argument in the Court of Appeals, the Court divided equally, Chief Justice Hunt, Justice Lott, Justice Earl, and Justice Foster being in favor of the present plaintiffs in error, and a reargument was ordered. On the reargument the Court refused to allow any effect to the judicial proceedings in Massachusetts, as against Robinson, a resident of New York, and reversed the judgment; to review which decision the writ of error was taken to this Court.

The precise question presented on this appeal is whether Robinson, a creditor of Gibbs, Jenney & Allen, who prior to their insolvency owned the *Arctic*, is by reason of his attachment entitled to hold the ship as against the defendants, who, fifty days before his attachment against the property of Gibbs, Jenney & Allen was levied, became the assignees of all their property for the benefit *of all their creditors equally* by

proceedings taken under the insolvent laws of Massachusetts, the ship in question at the time of the assignment being on the *high seas* and registered in the port of Fairhaven, Massachusetts, where all the owners resided; or in other words, whether the Court of Appeals, by its judgment gave the same faith, credit and effect to the judicial proceedings of the Court of Insolvency of the county of Bristol, in the State of Massachusetts, as those proceedings had by law or usage in the Courts of the State of Massachusetts, when the assignments in question were made.

First Point.

If the effect of the insolvent proceedings taken in Massachusetts was, under their law, to transfer the interest of Gibbs, Jenney & Allen in the *Arctic* to the plaintiffs in error for the benefit of all their creditors rateably, then full faith and credit was not given to those judicial proceedings by the Court of Appeals of New York.

The Constitution declares that "full faith and credit shall be given in each State to judicial proceedings in every other State, and that Congress may prescribe the manner in which such proceedings shall be proved and the *effect* thereof."

Constitution, Art. 4, § 1.

Congress, by Act of 1790, did accordingly provide that they should have such faith and credit given to them in every other court of the United States as they have by law or usage in the Court from which they are taken."

Stat. at Large, vol. I, p. 122.
See also Amendatory Act of March 27, 1804, 2 *Stat. at Large, p.* 298.

See also Amendatory Act 7 Feb 54
14 Stat 385 §2.
Frebleck v Wilson 12 Wall

The Court of Appeals necessarily decided what effect the insolvent proceedings in Massachusetts had by the law and usage in that State, and as it decided against the effect which plaintiffs in error claimed for them, the Supreme Court has jurisdiction to review the judgment of the Court of Appeals.

Judiciary Act, Vol. 1, *Stat. at Large, p.* 85, § 25.

Green vs. *Van Buskirk*, 7 *Wallace.*

Opinion of the Court, by Justice Davis, p. 145.

Justice Sutherland, in his dissenting opinion, in the Supreme Court of New York, expressly admits that the title to the *Arctic* passed to the assignees, and he expressly says that the New York Courts will not recognize and give effect to the assignment as against New York creditors (*p.* 21, *fol.* 29).

Second Point.

The effect by the law of Massachusetts, of the assignments by the Judge of Probate and Insolvency was to convey to the plaintiffs in error by the voluntary consent and upon the application and request of Gibbs, Jenney and Allen, over whom the Court had complete jurisdiction, all their property "*which they could have lawfully sold, assigned, or conveyed.*"

Mass. Statutes, Ed. 1860, *p.* 586, § 44.

In Evidence, p. 8, *fol.* 13.

1. As there is no question that Gibbs, Jenney and Allen could have sold their interest in the *Arctic*, whether she was within or without the State, there is no room for a construction of the statute which would limit the assignment to property within the State.

2. Assuming that the statute of Massachusetts is open to construction as to whether the Legislature intended that such assignments made under the insolvent laws of the State, should convey the property of the insolvents, whether situated within or without the State, then it is apparent that such was the intention. The language of the provision above quoted as to the effect of the assignment is explicit and inconsistent with any other intention (§ 44, p. 586; see also § 46, 40, 47).

After provisions for the examination of the debtor, it is provided that the debtor shall at the expense of the estate, make and execute such deeds and writings, and endorse such bills, notes and other negotiable papers, draw such checks and orders for money deposited in bank and elsewhere, and do all such other lawful acts and things as the assignee at any reasonable time requires, and which shall be necessary *or useful* for confirming the assignment and enabling the assignee to demand, recover and receive all the estate and effects so assigned, *especially any part thereof which is without this State* (§ 70, p. 590; see also § 72).

It cannot be disputed that it was the intention of the Legislature to convey to the assignees all the property of the debtor, nor that it was the intention of Gibbs, Jenney & Allen to convey all their property by means of the assignments.

Third Point.

The *Arctic* having been an American vessel, belong-

ing to the port of Fairhaven, in Massachusetts, where all the insolvent debtors resided, and having been engaged, at the time of the insolvent assignments, in the prosecution of a voyage upon the high seas, the assignments, when delivered, *proprio vigore, eo instanti*, effected an immediate transfer of the vessel to the assignees, as fully and completely as if she had been lying at the time in her home port.

1 *Kent's Com., p.* 26.

Plestoro v. *Abrahams*, 1 *Paige*, 236, *and an Appeal*, 3 *Wend*, 553, 558, 556–7.

Hoyt vs. *The Commissioner of Taxes*, 23 *N. Y., pp.* 224, 240.

Thuret vs. *Jenkins*, 7 *Martin*, 818.

Moore vs. *Willet*, 35 *Barb.*, 663, 665.

Story's Con. Laws, § 419.

Opinions of Justice Clerke and Leonard, in Supreme Court below, and opinion of Justice Foster, in Court of Appeals, below.

Hoyt vs. *Thomson*, 1 *Seld.*, 320.

The high seas are free and open to all nations of the world, and the laws of every State or nation have there a full and perfect operation upon the persons and property of the citizens or subjects of such State or nation. "The open sea is not capable of being possessed as private property. * * * The subjects of all nations meet there, in time of peace, on a footing of entire equality and independence. No nation has any right or jurisdiction at sea, except it be over the persons of its own subjects in its own public and private vessels; and so far territorial jurisdiction may be considered as preserved, for the vessels of a nation are, in many respects, considered as portions of its territory, and persons on board are protected and governed by the law of the country to which the vessel belongs."

1 *Kent's Com., p.* 26.

"Both the public and private vessels of every nation, on the high seas and out of the territorial limits of any other State, are subject to the jurisdiction of the State to which they belong. Vattel says, that the domain of a nation extends to all its just possessions; and by its possessions we are not to understand its territory only, but all the rights (droits) it enjoys. And he also considers the vessels of a nation on the high seas as portions of its territory."

Wheaton's International Law, (*8th ed., by Dana*, 1866,) § 106, *p.* 169.

The learned Chief-Justice is in error in saying that Massachusetts "has no jurisdiction or legislative dominion on the high seas." She possesses all sovereign rights, both on land and sea, except such as she has surrendered to the United States. She cannot punish crimes committed on the high seas, because she has parted with all admiralty jurisdiction (Const., Art. III, Sec. II); nor can she interfere with the operation of the laws enacted by Congress for the regulation of commerce and navigation (Const., Art. I, Sec. VIII, Subd. 4); nor can she generally lay duties on ships and vessels, or their cargoes (Const., Art. I, Sec. X, Subd. 2); but in other respects she has parted with her rights at sea to no greater extent than she has upon land within her own territories.

Neither the government of the United States, nor that of any State, is alone completely sovereign, either within the territory of the State, or on the high seas, but the two united possess all sovereign powers in both places. Wherever the former falls short of exercising full sovereign powers, its place is supplied by the latter. Thus, the Constitution and Laws of the United States generally take no cognizance of private property, either on land or at sea; and the consequence is that private property in both places is mainly governed by the laws of the respective States; otherwise it would be subject to no law at all.

Since the passage of the bankrupt law, indeed, the government of the United States has assumed an important jurisdiction over private property, which it did not exercise at the time now under consideration; and the State of Massachusetts has undoubtedly been deprived thereby of the jurisdiction which she exercised in this case.

It may be conceded, also, that Massachusetts has no international relations; but the question here is as to the operations of the *municipal* law of Massachusetts. *International* law, the benefit of which the United States secures to each State and its citizens, merely declares that the *municipal* law of every State shall have jurisdiction over its citizens or subjects and their property on the high seas.

In the case of Plestoro vs. Abraham, 1 Paige, 236, it appeared that an assignment in bankruptcy was made in England, while the property in question was in the possession of the bankrupt on the high seas, on its way from England to this country, but whether in an American or British vessel did not appear. Upon these facts, *Walworth*, Ch., said: (p. 238). "Even the property itself, at the time of the assignment, was constructively within the jurisdiction of that country (England), being on the high seas, in the actual possession of a British subject. Under such circumstances, the assignment had the effect to change the property and divest the title of the bankrupt, as effectually as if the same had been sold in England under an execution against him, or he had voluntarily conveyed the same to the assignee for the benefit of his creditors."

In Story's Confl. of Laws, §419, after citing this decision in the text, the learned author, in a note, says: "It is difficult to perceive how the doctrine of the Chancellor, as to the operation of the British bankrupt laws upon British subjects and their property *in transitu*, can be answered. The transfer must be admitted to be operative to divest the bankrupt's title to

the extent of an estoppel, as to his own personal claim in opposition to it; for the law of America, be it what it may, had not then operated upon it. It was not locally within our jurisdiction. No one could doubt the right of the assignee to personal property locally in England at the time of the assignment. In what respect does such a case differ from a case where it has not passed into another jurisdiction? Is there any substantial difference between its being on board of a British vessel and its being on board of an American vessel on the high seas?"

Upon appeal from the Chancellor's decision to the Court of Errors, MARCY, J., said: (3 Wend., 553) "Another view of this case arising out of the peculiar situation of the property in question, when the commission issued, may be taken, which may be satisfactory to those who cannot acquiesce in the foregoing conclusion. Hitherto I have considered the property as in this country when the commission issued. Such, however, was not the fact. It is a self-evident proposition that the municipal laws of a country, unless restricted by their terms or nature, operate to the utmost extent of the jurisdiction of that country. Each nation has a concurrent jurisdiction upon the ocean; the municipal laws of England *in relation to the subjects of that country, and the property of those subjects afloat upon the ocean*, must be adjudged, I think, to have the same effect as if both were within its territorial limits. * * * When the commission issued, the property was within the jurisdiction of the British government, but not where that jurisdiction is absolute and exclusive; the bankrupt fleeing, as is alleged, from his own country, had not then found a refuge in any other, nor had his property found a protection from the pursuit of his fellow-subjects by being placed where the laws of their own country were counteracted or overruled by those of another government. This view of the subject would seem to clear the case from all doubt, if any remained, as to actual transfer of the

property upon which the injunction rests." This view was also concurred in by Sutherland, J.

It is true that the decision of the Chancellor was eventually reversed in the Court of Errors, but the reversal does not weaken the authority of the case upon the point under consideration; for the only two members of the Court (Senators Maynard and Stebbins), who expressed opinions adverse to those of the Chancellor and Marcy, J., cited above, based themselves entirely upon the ground that there was no evidence in the case that the goods were on board a British vessel (pp. 558, 566–7).

In the case of Thuret *vs.* Jenkins, 7 Martin, 818, a ship belonging to the port of New York and owned there; was transferred while at sea, by her owners in New York, in accordance with our law; and the ship subsequently arrived at New Orleans, and was there attached by creditors of the former owners before any delivery thereof to the vendee, such delivery being necessary to complete the sale by the law of Louisana. It was held that the attachment did not overreach the title by the transfer, and that the transfer was valid to all intents and purposes The Court said (p. 353): "In the present case, the ship, the subject of the sale, was at sea was a New York ship, and the vendor and vendee resident in New York. If, therefore, according to the *lex loci contractus*, that of the domicil of both parties, the sale transfers the property without a delivery, it did so *eo instanti* or not at all. In transferring it, it did not work any injury to the rights of the people of another country; it did not transfer the property of a thing within the jurisdiction of another government. If two persons in any country choose to bargain as to the property which one of them has in a chattel, not within the jurisdiction of the place, they cannot expect that the rights of persons in the country in which the chattel is, will be permitted to be affected by their contract. But, if the chattel be at sea, or in any other place, if any there be, in which the law of

no particular country prevails, the bargain will have its full effect, *eo instanti*, as to the whole world. And the circumstance of the chattel being afterwards brought into a country, according to the laws of which the sale would be invalid, would not affect it." And see, to the same effect, Southern Bank *vs.* Wood, 14 Louis. Ann., 554.

In Moore *vs.* Willett, 35 Barb., 663, *Ingraham J.*, said: (p. 665), "There is also an additional fact in this case which adds much to the plaintiff's claim of title; and that is, that at the time of the assignment, the vessel for which this action was brought was on the high seas. The assignment would operate there irrespective of our laws; and the title would pass to the plaintiffs if the assignment was valid in the place where it was made. The title having once passed, the subsequent arrival of the vessel here, and the levying of an execution here, could not defeat the plaintiff's title previously acquired."

In Hoyt *vs.* The Commissioner of Taxes (23 N. Y., 224, 240), the Court held that ships belonging to a port in New York, are to be considered as actually within the State for the purposes of taxation, although at the time on the high seas, *Comstock, J.*, saying (p. 240: "I have no doubt that ships at sea, registered at a port within this State, and consequently having no *situs* elsewhere, are justly taxable to the resident owner."

This is not a case, therefore, in which the Court is called upon to exercise any comity in favor of the plaintiffs in error; for the law of Massachusetts had had its full operation before the property came within the limits of the State of New York. The defendants simply demand that property, to which they had a perfect title before it ever came into New York, and which has been taken from them here by an illegal attachment, shall be restored to them.

So far, therefore, from the defendants in error having any just cause of complaint against the learned Judges in the Supreme Court, the latter erred in con-

ceding in the plaintiff's favor that the question presented was one of comity. And the Chief Justice adopted the error. This error, it is conceived, was the occasion of Judge *Sutherland's* dissenting; for he bases his opinion upon the broad ground that the Courts of this State should disregard the insolvent assignments in Massachusetts, in favor of New York creditors, though the vessel had been lying in the port of Fairhaven at the dates of both assignments. But surely that position is wholly untenable. What possible concern is it of the State of New York, in what manner Massachusetts confers title to property within her own jurisdiction? To disregard the insolvent assignments in the case supposed, and sustain an attachment at the suit of a New York creditor, would be simply taking property from a citizen of Massachusetts, and giving it to a citizen of New York, by no law except that of the strongest, and by no "right" except that which "might" makes, and as between two independent States such an act would be a just cause of war. (*See Opinion of Justice Foster below.*)

The Massachusetts assignments went into effect instantly, upon their delivery to the assignees.

It was not argued below that they could take effect at any other or different time. And the Chief Justice below takes the position squarely, that no title whatever did, at any time, pass to the assignees.

Judge Sutherland, upon the same side, takes a contrary position, and is constrained to admit that by the assignments the title did pass upon delivery of the assignments, but says the New York courts wont recognise it. Thus, it appears at the outset that the opinions delivered in favor of the defendants in error are entirely irreconcilable.

Suppose the *Arctic* had not stopped at New York, but gone directly from the Pacific Ocean, where she was when the assignments were delivered, to her home port in Fairhaven. when, in the view of the learned Chief Justice, would the title have passed? Clearly,

according to his view, not until she arrived at Fairhaven. But it has never been held that delivery of possession was necessary to pass the title to property on the high seas, from the fact that it was often incapable of manual delivery there. Why should that rule be violated in this case? It is a perfectly well-settled rule that personal property is transferable according to the law of the domicile of its owners. Why should that rule be violated in this case? It is a perfectly well-settled fiction of law that property on the high seas is a part of the territory of the domicile of her owners. Why should that fiction be set aside to work injustice in this case?

Whose ship would she have been in the view of the learned Chief Justice, while passing from the Pacific to Fairhaven?

According to the view of the Chief Justice, that of Gibbs, Jenney & Allen; and that, too, notwithstanding they had, in writing, consented to and procured her assignment, in accordance with the laws of their State, to assignees, who had accepted the assignment; and that too, notwithstanding that the laws of Massachusetts, would not suffer Gibbs, Jenney & Allen, after such assignment, in any way to interfere with her or exercise any ownership over her; and that, too, notwithstanding also that the assignees were held liable to account for her, if they neglected to do all in their power to appropriate her to the benefit of all the creditors of Gibbs, Jenney & Allen;

Suppose she had sunk in mid-ocean, whose ship would have been sunk? Suppose the assignees had sold her while on the ocean and had divided the money among the creditors of Gibbs, Jenney & Allen, and the purchaser had taken possession of her and brought her to New York, could she, on her arrival in New York, have been seized as the property of Gibbs, Jenney & Allen? Certainly: upon the theory of the learned Chief Justice.

Suppose after the execution and acceptance of the assignments, she had been lost--being insured in a New York company—could Mr. Robinson have attached

and held the insurance money as the property of Gibbs, Jenney & Allen, to the exclusion of the other creditors?

To test the question whether by the *Law* of *Massachusetts*, the *Arctic* would have passed to the assignees; suppose after the assignment had been made, she had gone to Fairhaven, and before the assignees had taken possession, Robinson had issued an attachment against Gibbs, Jenney & Allen, and seized her there, could he have held her? Clearly not.

The Insolvent Court had jurisdiction *over the persons* of Gibbs, Jenny & Allen, and had adjudicated them to be insolvent, and having such jurisdiction, over their persons had, at their request, and pursuant to the Massachusetts Statute, assigned their property, wherever situated.

This assignment conveyed all their property which was *not then subject to other jurisdiction, and in regard to which there was no conflict of laws.* No case can be cited which is in opposition to this position. Every case relied on by the other side will be found to involve this element of a conflict of laws.

That a Massachusetts Court would not give priority to such a claim as that of the defendants in error, whether the claimant was a citizen of another State, or of its own, is apparent from the act itself, and from the decisions of her Courts.

The object of her Insolvent Act is the rateable distribution of the property of an insolvent among his creditors. In that State *no creditor of an insolvent is allowed a preference over others.*

Any assignment by an insolvent, giving preferences, is illegal.

Insolvent Act, § 91, p. 594.

Robinson's attachment, therefore, in Massachusetts, would have been clearly illegal, and there can be no question that by the laws and *usage of that State*, the title to the *Arctic* passed to the assignees, and no [redacted] sin-

gle creditor of Gibbs, Jenney & Allen, could by any means known to Massachusetts law have appropriated the *Arctic* to the payment of his own debt in preference to that of other creditors.

The claim of the plaintiffs in error is supported by two legal fictions, which are perfectly well settled law.

1st. That personal property has no *situs* other than the domicile of its owners.

Story's Con. of Laws, § 376, 409.

2d. That personal property on a ship on the high seas is within the territory of the domicile of its owners.

Hoyt vs. *The Commissioner of Taxes*, 23 N. Y., 224.

It is conceded that the first legal fiction gives way where it would work injustice, and where there is a conflict of laws between the different States.

Story's Con. Laws, §§ 412, 420, 421.

No instance can be cited where the other legal fiction has been ever set aside.

It is evident that the case at bar is not one where either would work injustice. The effect of setting aside the rule, would be, in this case,

1st. To deprive the plaintiffs in error of property which they had lawfully acquired under the laws of Massachusetts.

2d. It would do that in favor of a person who had lived nearly all his life in Massachusetts, and whose business interests were still there.

3d. It would be to give an inequitable preference to this one wealthy creditor at the expense of the other creditors of Gibbs, Jenney & Allen.

Fourth Point.

By the rule of comity, an insolvent assignment, made pursuant to the laws of Massachusetts, will have full effect in New York, provided it does not conflict with the law or the public policy of that State, nor deprive its citizens of any of their just rights.

Story's Confl. of Laws, §§ 29, 38, 349–351.

It is not claimed that the insolvent assignments in the present case conflict with any law or public policy of New York; nor has any citizen of that State shown that they will deprive him of any of his just rights Admitting Robinson to be a citizen of New York, within the meaning of the rule, what right of his will the assignments interfere with? It is not denied that under the assignments he would have received his full *pro rata* share of the insolvent estates. But it will be said that the assignments prevent his obtaining priority over the other creditors, and thus securing payment in full of his debt at their expense. That, however, would be a flagrant injustice to the other creditors; and surely the sovereign State of New York ought not to go out of her way to aid her citizens in doing injustice to others, especially in case of one who has but recently come within her limits for his own advantage, and whose business and property are still in the State whose equal laws he complains of. Admitting that there might be cases in which a person, even situated like Robinson, would be permitted to gain a priority through New York attachment laws, to the subversion of an equal disposition of the debtor's property in Massachusetts; this is not such a case. If, for instance, the notes in question had been given to Robinson in payment for goods purchased of him in New York by the makers, it might be said that the duty of enforcing payment of these notes to the extent of its power devolved primarily upon the State of New York, and that it was a reasonable presumption that

credit was given to the makers in this State in reliance upon the remedies furnished by our law for the collection of debts. But to sustain the attachment in the present case would have no other effect than to encourage speculative persons to pry into the affairs of failing debtors in neighboring States, with a view to engaging in such operations as Robinson attempted in the present case; a practice which the State of New York certainly has no desire to countenance.

It is suprising that the learned Chief Justice of the Court of Appeals of New York should suffer his prejudices to be aroused against the State of Massachusetts, merely because her Courts declined to permit an insolvent debtor in New York to appropriate his property in Massachusetts to the payment of his New York creditors in full, *to the total exclusion of his creditors in Massachusetts:* and that he should be willing to assist one of the citizens of New York in doing a wrong to creditors in Massachusetts, because the Courts of Massachusetts refused to permit another New York citizen to do a similar wrong as to property within the jurisdiction of that State.

See Zipcey vs. *Thompson*, 1 *Gray*, 243.

Fifth Point.

The Court below refers to some cases in Massachusetts, apparently with a view to show that in a similar case to the one now before the Court, a Massachusetts Court would make a similar decision to that made by the Court of Appeals, but the cases do not sustain that position.

1. It would not be material if an authority sustaining such a position could be found, for the New York assignees would have their writ of error to the

Supreme Court, and such decision could be reversed; to correct precisely such errors and such violation of the constitution, and of the laws of Congress, the writ of error to this Court was provided.

2. But no support for such a position can be found in the reported decisions of Massachusetts.

The first case referred to in the prevailing opinion of the Court of Appeals, is *Zipcey* vs. *Thompson*, 1 *Gray*, 243.

In that case Thompson and another, residing at Boston, were indebted to the principal defendants, who resided in New York. The latter, being insolvent, made an assignment to Hicks and Brown, of all their real and personal property, and choses in action, in trust, 1st, for the payment of expenses; 2d, for the payment of the debts of the assignees to the firm of Brown, Brothers & Company, and Hicks & Company, and 3d, for the payment of certain other creditors, and 4th, out of the surplus to pay any remaining debts and to return the balance, if any, to the assignors.

By the law of New York such an assignment was valid. Zipcey, a creditor of the principal defendants, was a resident of Boston, and after the assignment, by trustee process attached the debt due by Thompson and another, of Boston, to the principal defendants.

By the law of Massachusetts such an assignment giving preferences was *unlawful, and against their public policy, and a violation of an express statute*. And by their law property of a debtor within the State of Massachusetts, as this debt was *at the time the assignment was made*, was subject to attachment.

It is apparent that here was a *direct conflict of laws*, and the case is no authority against our position, that the assignments conveyed all the

property of Gibbs, Jenney & Allen, which was *not then subject to other jurisdiction*, and in regard to which there was *then no conflict of law*.

The next Massachusetts case cited is *Blake* vs. *Williams*, 6 *Pick.*, 303. In that case the question was whether by an English bankrupt assignment, a debt owed in Massachusetts, which was attached, after the assignment, by trustee process, could be held by the creditor as against the assignee in bankruptcy. This case therefore involved, when the assignment in bankruptcy was made, a question in regard to property *at the time within the jurisdiction of Massachusetts*, and subject to its laws. And Parker, Ch. J., in his opinion in commenting on Goodwin *vs.* Jones, in the 3d of Mass., p. 517, where Chief-Justice Parsons said, "It is admitted that the assignee of a bankrupt duly appointed, pursuant to the laws of the State where the bankrupt dwells, may maintain an action in that character in any other State, *the laws of which are not repugnant to his recovery*," says, "Now the very question is whether the laws of this State are not repugnant to his recovery." So that this case, (when the facts are considered, and when the opinion is considered in relation to these facts,) directly supports the position we insist on; and it differs from the case at bar, in that the property in the case at bar was not in New York when the assignment took effect, and therefore it infringed no law of New York.

The next case cited is *Lanfear* vs. *Sumner*, 17 *Mass.*, 110. This case turned on an entirely different point from any in controversy here, to wit, the necessity of a delivery on a sale of goods to convey title. In the case at bar, the subject being a ship at sea, incapable of manual delivery, no such question can arise.

1 *Parsons Maritime Law*, 78, 79, 80, *and note*,

and cases cited in Judge Foster's opinion, in the Court of Appeals.

Besides, Lanfear *vs.* Sumner has been repeatedly held in Massachusetts and other States, to have been wrongly decided even on the question involved (*see note by the reporter at the end of the case.*)

The last Massachusetts case cited is *Ingraham* vs. *Geyer*, 13 *Mass.*, 146.

That was a case where a Massachusetts creditor attached by trustee process a debt owing by a Massachusetts debtor to a firm in Philadelphia. The trustee answered, setting forth an assignment executed at Philadelphia by the Philadelphia firm, of all their property in trust for such creditors as *should* within four months *release them from all their debts*, the surplus, if any, to be distributed to the other creditors and the balance to the assignors.

The Court held, that the assignment was *illegal by the law of Massachusetts*, and against the declared *public policy* of that State. That if made in Massachusetts, it would have been void. So this case is one of a *direct conflict between the laws of these two States* as to property *within Massachusetts*.

The Chief Justice of the Court of Appeals, however, expressly says these decisions are cited to *demonstrate* that we are not likely to extend the rule in this case beyond that which has been adopted by other States upon this subject."

The Chief Justice seems entirely to have misapprehended the cases in Massachusetts, referred to by him. In each of the cases cited, the question arose as to property within that State at the time the assignments in question were made, which by their laws citizens of Massachusetts had the power and right to seize, by attachment, when the assignments were made, and the effect of the foreign assignments was to deprive their citizens of those rights. But what right or power had any

citizen of New York to attach the *Arctic* when she was in the Pacific Ocean when the assignments were made to the plaintiffs in error? None whatnever; and no right of any person in New York to attach her, was interfered with. The fact is that the defendant, in error, has attached the property of Crapo and others, plaintiffs in error, as the property of Gibbs, Jenney & Allen, simply because they once owned it.

Neither does any other case cited by the Court of Appeals differ from those above referred to favorably to defendants in error in this respect. They were all cases of a conflict between the laws of different sovereignties at the time the assignments were made.

The case of Holmes *vs.* Remsen and others—executors of *Clason*, in 20 Johns. R., p. 229, is strangely enough cited by the Court. That was a case in which plaintiffs, New York trustees *in invitum*, under the New York absent debtor law, of Mullett, *an absent debtor*, sued defendants, executors of Clason, to recover the amount of a debt which Clason in his lifetime owed to Mullett, and which the English assignees, in bankruptcy, of Mullett had collected out of property of Clason in England. The suit was an attempt to force double payment of the same debt, the plaintiff contending that the bankruptcy proceedings in England were of no effect; Chancellor Kent decided in favor of defendants, as did the Supreme Court.

In the Supreme Court, Johnson held that the payment of the debt in England *being compulsory*, and by the decision of a court of competent jurisdiction, was a bar to an action for the same debt. He discussed at great length the effect of an English assignment in bankruptcy as to the transfer of a debt due from an American to the bankrupt.

This discussion was entirely unnecessary to the decision of the case and *obiter*, and every other

Judge who sat, to wit, Spencer, the Chief Justice, Yates, and Woodworth, each placed their decision of the case on the ground that the *compulsory payment* in England was a good defence to the action, but declined *expressly* to give any opinion upon the question discussed by Johnson.

Upon the point we are considering, this was a case where the property, the debt, was within the jurisdiction of New York, and where there was a direct conflict, at the time of the assignment, between the law of New York and that of England.

The next case cited is that of *Abraham* vs. *Plestero*, 3 *Wend.*, 538. To this case we invite the most careful attention, as the reasoning of all the Judges fully sustains the position taken by the plaintiffs in error. It is reported, first in 1 Paige Chan. R., p. 236 and on appeal in 3 Wend., 538, and is referred to on the 10 page of these points.

The next case is that of *Hoyt* vs. *Thompson*, in the Court of Appeals of N. Y., 1 *Sdd.*, 320. How this case was supposed to sustain the doctrine contended for by the Chief Justice it is impossible to conjecture.

It was a bill in equity by Hoyt *cs.* The State of Michigan and the Long Island Railroad Company. Hoyt claimed title to a debt of the Long Island Railroad Company to the Morris Canal and Banking Company, by virtue of its transfer to him by assignees in insolvency, appointed by a court of New Jersey; the former was a New York corporation, the Morris Canal and Banking Company was a New Jersey corporation. Thomson and the other defendants claimed title to the debt by virtue of assignments made to them by officers of the Morris Canal and Banking Company. The bill was demurred to upon the ground, among others, that the title of the plaintiff depending upon the insolvent laws of New Jersey, and they having no extra territorial force, he, plaintiff, obtained by

such laws no title to the property in New York, to wit, the debt from the New York corporation. The Court of Appeals *overruled the demurrer*. Thus necessarily deciding that the insolvent proceedings in New Jersey *did transfer the property in New York* to the plaintiff in that case. And it was placed upon the very distinction upon which we insist that it was not a case of any conflict of law between the States of New Jersey and New York. Thompson, the defendant, was a creditor of The Morris Canal and Banking Company by virtue of certain judgments which he had purchased from the State of Michigan for $20,000. He was a resident of the State of New York, and the effect of a decision in favor of the plaintiff was to deprive him, a citizen of the State of New York, of property in New York, to wit, the debt of The Long Island Railroad Co. These facts show beyond dispute that the question of time to which the conflict of laws relates is the time of the *execution of the foreign assignment*. Then Thompson was not a New York creditor, and it was not deemed important whether or not he became such afterwards, as to any effect that might have on the efficacy of the assignment previously made. To be sure, the State of Michigan, from which Thompson derived his title to the judgments, was a creditor at the time of the statutory assignments, but the Court held that that State had no rights under the New York law that conflicted with the laws of New Jersey, as its title to the debt was bad; and we beg the Court to particularly notice that this same Court of Appeals held that the New Jersey statutory assignment *passed the title* to the property situated *within the State of New York*, and why? because no question existed *at the date* of the statutory assignment arising from any *conflict of laws* between the two States.

Chief Justice Ruggles says,

"But it is insisted that the assignment by the receivers in New Jersey, admitting it to be valid in that State, has no extra-territorial force, and does not operate in this State. Whether it would be valid as against creditors of the corporation, proceeding by attachment against it in the State of New York, or as against previous purchasers of the corporation, are questions which do not arise on the record in this case. There is no conflict between the plaintiff's title on the one side, and attaching creditors or purchasers on the other side. We have already seen that upon the bill and demurrer the defendants, who claim under the State of Michigan, are not clothed with the character of purchasers. The question, therefore, is, whether the plaintiff's title derived from the proceedings of the Court of Chancery, in the State of New Jersey, in pursuance of a statute of that State, is to be recognized by the courts of this State as so far valid that it may be enforced here against the Long Island Railroad Company.

If the defendants are right in their position, that the assignment to the complainant is inoperative in this State, because it was effected by operation of a law of New Jersey and not by the voluntary act of the corporation; the consequence is, that although the debt against the Long Island Railroad Company belongs in the State of New Jersey to the plaintiff, it belongs in this State to the Morris Canal Company, and that that company must bring the action in this State to recover it. But here a difficulty arises. The order appointing a receiver of the property of an insolvent corporation is accompanied by an injunction, restraining the directors of the company from collecting its debts or paying over the avails; and this injunction is general, without reference to the State or country where the debtors may re-

side. The object of the proceeding in New Jersey is to take everything out of the hands of the corporation and to put everything into the hands of the receiver.

A suit by the corporation for its own benefit here is a breach of the injunction in New Jersey, and the suit cannot be brought without incurring the penalty. But suppose the corporation should sue in this State, notwithstanding the injunction in New Jersey, on what ground is it that a foreign corporation can maintain a suit here? The principle that the statutes of foreign States have no extra-territorial force here, if strictly applied, is as fatal to the action of the corporation as it is to the action by the receiver's assignee.

The corporation is no less the creature of the statute of New Jersey than is the transfer by the receivers to the plaintiff. But it is well settled that a foreign corporation may sue in the courts of this State; and equally well settled that such suit is allowed only by the comity existing between one state or country and another. (*Bank of Augusta v. Earle*, 13 *Peters*, 590, 591.) But what kind of comity can that be called, which allows a foreign corporation to sue here, in violation of the law of the State in which it was created? A corporation not allowed to sue in its own State certainly cannot be allowed by the friendly courtesy of another to bring its action there. The comity which allows a foreign corporation to sue in ordinary cases would forbid it in a case like the present. But can it be said that the receiver's assignee may bring his suit here in the name of the corporation, for the benefit of the assignee? *Prima facie*, such a suit would be for the benefit of the insolvent corporation, and open to the objection above stated. This could not be removed, without showing the receiver's assignment and obtaining from the Court here a recog-

nition of its validity. Such a recognition would yield the entire principle, not only of the validity of the assignment, but that in a court of equity the suit should be brought in the name of the real owner. The result is, that if this suit cannot be maintained, the debt against the Long Island Railroad cannot be collected.

It is a conceded principle, that the laws of a State have no force, *proprio vigore*, beyond its territorial limits. But the laws of one State are frequently permitted by the courtesy of another to operate in the latter for the promotion of justice, where neither that State nor its citizens will suffer any inconvenience from the application of the foreign law. This courtesy or comity is established not only from motives of respect for the laws and institutions of foreign countries, but from considerations of mutual utility and advantage. Until the decision of the case of *Abraham* vs. *Plestoro*, in the Court for the Correction of Errors (3 Wend., 358), it had been uniformly held in this State, that in virtue of this comity, the assignees of a foreign bankrupt were entitled to sue for and recover the debts due to the bankrupt within this State, except where the claim of the assignees came in conflict with creditors in this State, claiming under attachments against the bankrupt's property. (*Bird* vs. *Pierpont*, 1 *Johns. Rep.*, 118: *Bird* vs. *Caritat* 2 *Johns. Rep.*, 342: *Holmes* vs. *Remsen*, 4 *Johns., Ch.* 460: *Holmes* vs. *Remsen*, 20 *Johns. Rep.*, 229, 267.) In some of these cases full effect was given to a foreign assignment without qualification. But in the case last mentioned, which was a case of English bankruptcy, the principle was stated with the qualification in favor of American creditors. In that case, a learned and elaborate opinion was delivered by Mr. Justice Platt, in which he denied that the English statutory assignment in bankruptcy cre-

ated a lien here, so as to deprive American creditors of their remedy by attachment under our laws, but fully admitted the right of those assignees to sue here by virtue of the commission or authorization in England. (*See page 267–8 of the Case.*) In the case of *The New Jersey Bank* vs. *Thorp* (6 *Cow.*, 46), the right of foreign assignees in bankruptcy to bring suits here was recognized; and trustees appointed by an act of the Legislature of New Jersey, by which the property of the corporation was vested in them, were allowed to sue here in their own names.

The case of *Abraham v. Plestoro*, above referred to, is supposed by the defendants to have established in its strictest sense, and without qualification, the doctrine that a foreign assignment in bankruptcy is absolutely inoperative and void in this State, but I think this a mistake. The point here decided seems to be correctly stated in the reporter's marginal note. It is this: "That an "assignee under a foreign commission of bank- "ruptcy, is not entitled, before judgment, to an "injunction to restrain the bankrupt from receiving "property which was on the high seas, on its way "from England to New York, at the time of suing "out the commission." The facts were, that Abraham, being largely indebted in England, left that country, bringing his property, or a considerable portion of it, with him, to New York. A commission of bankruptcy was sued out against him in England, and a provisional assignment executed to James Johnston, who followed him to this country, and finding the property in the Custom-House, filed a bill against Abraham and the Custom-House officer, and obtained an injunction restraining the Collector of the Customs from delivering the property to Abraham, and forbidding the latter to receive it. Abraham, in his answer denied that he absconded from England, or that he left there

for the purpose of defrauding his creditors, and insisted that the commission of bankruptcy had issued improvidently and illegally. A motion to dissolve the injunction was denied by the Chancellor, and Abraham appealed from that decision. The order of the Chancollor was reversed, and the injunction dissolved; but on what ground cannot well be ascertained from the report of the case. Two of the Judges of the Supreme Court, and two Senators, were in favor of affirming the Chancellor's order. Opinions in favor of reversal were delivered by Senators Allen, Maynard, Oliver, and Stebbins. Senator Allen put the case on several grounds, some of which have no application to the case now under consideration. One of the reasons given by Senator Maynard for reversal was that the assignment to Johnson was provisional merely, and was still open to contestation by the bankrupt, and therefore, the cases holding that a foreign assignment operated as a transfer here, were inapplicable. Senator Oliver, in his opinion, says: "The question is not whether a foreign as-
"signee shall be permitted to sue in our courts; in
"relation to that there can be but one opinion. Had
"the proceedings in bankruptcy in this case been
"perfected, the bankrupt acquiescing in their
"justice and propriety, and the assignee been
"substituted in his place, and a question had
"arisen between him and a debtor of the estate,
"no one would have doubted or questioned the
"right of the assignee to sue in our courts; but
"that is not the case we are considering. The
"question here is whether the comity of nations,
"or in other words, the enlightened and liberal
"principles of jurisprudence, require that we shall
"enforce the bankrupt law of a foreign nation, by
"giving effect to a statutory assignment, not
"merely by allowing the assignee to sue in our
"courts when the validity and legality of the as-

"signment is not disputed; but by enforcing the "harsh, rigorous, and penal provisions of a bank- "rupt law against the bankrupt himself, who de- "nies that he is insolvent, and insists that if a "commission of bankruptcy has issued against "him, (of which he professes his total ignorance), "it has issued improvidently and illegally."

Senator Oliver puts the case still on several other grounds, some of which affect the point we are considering, and others do not. Senator Stebbins, after denying that the foreign assignment wrought a change in the title here, denied also that the assignee was entitled to the injunction, even if he were the owner of the property.

It is impossible, therefore, to say, that the case of Abraham *v.* Plestoro was decided on grounds affecting the question now under consideration.

It remains entirely uncertain, whether the decision turned upon the point that the foreign assignment was inoperative here; or on the ground that although the assignee may sue the bankrupt's debtor here, he cannot sue the bankrupt himself; or on the ground that the assignment was provisional merely, and therefore imperfect, or on the ground that a foreign assignee, before judgment, is not entiled to an injunction; or on the question whether the proper remedy was not at law.

I have not overlooked the case of *Johnson* vs. *Hunt*, (23 *Wend.*, 87), in which a different view of the case of *Abraham* vs. *Plestoro* was taken, and so far as the decision in that case was founded on that view, I feel myself compelled to dissent from it, and to adopt the principle I have quoted from the opinion of Mr. Justice Platt, in Holmes *vs.* Remsen; adopting at the time what is said by him and by Chief Justice Taney, in 13 Peters, 590, to the effect that from the intimate political union, and the extensive commercial intercourse

between the American States, and from the similarity of their laws and institutions, we are called upon to encourage and establish a greater degree of comity and courtesy towards one another than towards the nations of Europe, with whom such relations do not exist.

It is satisfactory to know that the construction above given to the case of *Abraham* vs. *Plestoro*, and my own conclusions upon the points now in question, are in conformity with the opinion expressed by Mr. Justice Story, in his treatise on the Conflict of Laws, *sections* 419, 420, 421. In § 420, speaking on this question, he says, it is impossible not to feel that the general current of American authority is in favor of the assignees. "In most of those cases in which assignments "under foreign bankrupt laws have been denied to "give a title against attaching creditors, it has "been distinctly admitted that the assignees "might maintain suits in our courts under such "assignments for the property of the bankrupt. "This is avowed in the most unequivocal manner "in the leading cases in Pennsylvania and New "York, already cited, and it is silently admitted "in those in Massachusetts. And unless the "admission can be overthrown, it surrenders the "principle; for no one will contend that the "assignees can sue either in law or equity in our "courts, *unless they possess some title under the* "*assignment*."

The case of *Harrison* vs. *Sterry*, (5 Cranch, 312,) presented only the question of preference between the assignees of a foreign bankrupt and attaching creditors at home; and although the language of the Court was general that "the bankrupt law of "a foreign country is incapable of operating a "legal transfer of property in the United States," its meaning as an authority must be qualified by the facts to which it was applied. It was not neces-

sary for the purpose of that case to state the qualification of the rule asserted; and for that reason probably it was omitted. It is well said by an English chancellor that "it is always unsatisfactory to abstract altogether the reasoning of the court in any reported case from the facts to which that reasoning is meant to apply; it has a tendency only to misrepresent one Judge and to mislead another."

Justice Page expressly states in his opinion that he does not understand any of the Court as agreeing with him as to his remarks [illegible] the statutory assignment in N[illegible]

When the Court reflect that [illegible] the effect of a foreign statutor[illegible] property within the State of [illegible] it was made, and that the case [illegible] property which was entirely without its jurisdiction when the assignments were made, it will be satisfied that it is impossible to reconcile the two cases. If the former decision was right, the latter is clearly wrong, and yet, the Court below cites that case as an authority for its decision in this case.

The next New York case cited by the Court is Willetts *vs.* Waite, 25 N. Y., 577, and was a case where, by statutory assignment of the State of Ohio, the foreign assignees claimed property which was within New York at the time of the assignment, and which was subsequently, before its removal, attached by creditors residing here.

There was then a direct conflict between the laws of Ohio and New York at the time of the assignment, and the Court says: "The assignees took, *subject to every equity* and *subject to the remedies* provided by the law of the foreign country where the debt is due and the property is situated" (p. 586.)

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Justice Page expressly states in his opinion that he does not understand any of the Court as agreeing with him as to his remarks upon the effect of the statutory assignment in New Jersey (p. 357.)

When the Court reflect that ~~this case~~ related to the effect of a foreign statutory assignment upon property within the State of New York ~~where it it was made~~, and that the case at bar relates to property which was entirely without its jurisdiction when the assignments were made, it will be satisfied that it is impossible to reconcile the two cases. If the former decision was right, the latter is clearly wrong, and yet, the Court below cites that case as an authority for its decision in this case.

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Sixth Point.

The other authorities cited by the Court of Appeals are all cases where there was a conflict of laws, and therefore not in point.

The case of Booth *vs.* Clarke, 17 How. (p. 327), is cited, but that is a case presenting a direct conflict between the law of New York and the United States Bankrupt Act of 1841.

The suit was brought in the District of Columbia, by Booth, who had been appointed Receiver in New York, by the Court of Chancery, in a creditor's suit, brought upon a judgment in favor of Camara against Clark, and the object was to collect a claim which Clark had upon the Mexican Government, and which had been paid to the Secretary of the Treasury, and apply it to the payment of Clark's debt to Camara. Clark, among other things, set up in his answer, that being a resident of New Hampshire, he had been adjudged a bankrupt, and one Hackett had been appointed an assignee of all the property for the benefit of all his creditors equally, and Justice Wayne says (p. 329): "This suit, then, is substantially between Hackett, as the assignee in bankruptcy, and Booth, the receiver, under Camara's creditor bill, that it may be determined by the Court which of them has the right to the Mexican fund for the distribution of it among the creditors of Clark, or whether Booth, as receiver, shall have from the fund a sufficient sum to pay Camara's entire debt, leaving the residue of it for distribution between Clark's other creditors."

The Court considered the demand as stale. Booth had slept upon his rights after his appointment for nine years, (p. 330), and the Court placed much stress upon the consideration that no precedent was cited for a suit by a receiver *in a creditor's suit*, either in England or this country, beyond the territorial jurisdiction of the Court. Justice Wayne held that being a mere creature of the Court, such receiver had not the powers which an assignee had under statutes of insolvency (p. 331).

The case of *Harrison* vs. *Sterry, in 5 Cranch*, 289; like all the other cases cited by the Court of Appeals, was a case where there was a direct conflict of laws. The fund was in South Carolina. It was claimed by attaching creditors there; also by attaching creditors from England, also by an assignee under an English Bankrupt Court; also by an assignee under an American Bankrupt Court; also by a New York trustee under a voluntary conveyance to prefer creditors. Surely the criticism of Chief Justice Ruggles upon that case, to the effect that the language used there was to be considered in connection with the facts of the case, was pertinent. The same criticism is applicable to most of the cases referred to by the Court of Appeals, The language used in those cases, was used in reference to the facts before the Court, where in each case there was a conflict of laws.

The cases on which the Court below seems to have based its decision, were all cases involving a conflict of laws, at the time of the assignment, and where the property in litigation, which was claimed to have passed by the foreign assignment, was at the time of the assignment, within the jurisdiction of the Court where the decision was made. This case would be parallel to those if the *Arctic* had been within the State of New York at the time the Massachusetts assignment was executed. In such a case, very different questions arise. The laws of New York are entitled certainly in New York, to as great consideration as the laws of Massachusetts. And under those laws the creditors have rights which they are at liberty to enforce by attachment of property within their jurisdiction. In such case it may be sound law to hold that New York is not bound to give an effect to Massachusetts' laws, which deprive citizens of New York of the benefit of the provisions of her laws. And here are involved the questions discussed in treatises on the conflict of laws, and in the light of which the statements there made are to be weighed. But in this case there was no con-

flict between the laws of New York and Massachusetts, when the assignees acquired their title to the *Arctic*. She was not in New York, and was not subject to any law of New York. No one in New York had any right which could be enforced against her by virtue of any law of New York.

The cases cited, therefore, are not in point, and furnish no authority whatever for the decision made.

This is the view taken by Justice Clerke and Justice Leonard, of the Supreme Court, and by Chief Justice Hunt, Justice Foster, Justice Lott and Justice Earl, of the Court of Appeals.

The citations made from Justice Story, are all made in reference to cases where there was a conflict of laws. The are cited from his work on *The Conflict of Laws*. The learned Chief Justice quotes from Story, the following paragraph: "National comity requires "us to give effect to such assignment, only so far as "may be done without impairing the remedies or lessening the securities which our laws have provided "for our citizens" (§ 414). The Chief Justice seems to have overlooked the fact that the above quotation was not the opinion of Story himself, but it is what he says *is urged in support* of what may be deemed the American doctrine, see (§410). Yet the Chief Justice quotes it as if he supposed it to be Judge Story's view, which it was not, nor did it purport to be so (*Story's Con. of Laws*, § § 29–38, 349–351). The learned Chief Justice was clearly misled.

But another answer may be given, and that is:

1st. That giving effect to the Massachusetts assignment according to the law of Massachusetts did not "impair any remedy" which Robinson had by the New York law to attach the property of Gibbs, Jenney & Allen. That property was not in New York, and Robinson had no remedy against it. Was there any remedy then existing in Robinson's reach which affected it? None whatever. Why, then, may not

the assignment have effect so far as New York law is in question? Can it be seriously insisted upon that *property shall not be transferred in conformity with the laws of Massachusetts because such property may subsequently come into New York State*, and when it comes it may possibly be then wanted to answer an attachment issued against its previous owner? But if such conjectures are to be allowed, why is not the property as likely to be required to answer an attachment against the subsequent owners as against the former owners, against the assignees as the assignors. There is no existing remedy impaired against either.

2d. Giving effect to the Massachusetts law "*lessened no securities*" which the law of New York provided for its citizens. By that law only property within New York could be attached, and as this property was not in New York, it was no security for any citizen of New York.

There is a class of cases where a judgment of a sister State against a defendant for a sum of money has been sued on, and where it appeared, by the record or otherwise, that the defendants had never been served with process nor had notice of the suit.

In such cases the Courts have uniformly held that such judgments could not be enforced in other States, because there was no jurisdiction over the parties. But in the case at Bar the Court had complete jurisdiction over Gibbs, Jenney & Allen. They all appeared and petitioned for the decree that was made.

That class of cases is therefore no authority for the judgment of the Court in this case, and it is proper to say that such cases do not seem to have been relied on by the Court below.

Seventh Point.

The Chief Justice of the Court of Appeals says, in his opinion, "that the learned Judge who delivered "the opinion in the Supreme Court laid down the "general principle that the line of demarcation in "relation to this subject, the subject of comity, should "be between property actually within our limits at the "time of the assignment in insolvency or bankruptcy "and property not actually within our limits," and adds, "I can find no authority, nor can I find any "reason for such a distinction."

The distinction is sustained by both reason and authority.

As to authority, it is respectfully submitted that no authority for any different rule was referred to, while the recent case of Hoyt *vs.* Thompson, in the New York Court of Appeals, was an explicit authority with many other cases there cited for the rule that property passes by a foreign statutory assignment when in a different State from that where the assignment is executed, *provided there be no conflict of law regarding it.* And the language of all the cases sustain that position; Story and Kent and Chief Justice Parsons of Massachussetts went much farther, even to the extent of giving effect to the insolvent asignment, when there was a conflict of law, if it was prior in point of time.

In regard to the suggestion that there is no reason for such a distinction, we respectfully submit.

1st. That if it is the fact that the rule is firmly established, it is not essential that reasons be given; but,

2d. The rule is a reasonable one; what business has a New York Court to refuse effect to a law of Massachusetts, if there was no conflict between it and New

York law at the time the Massachusetts law took effect!

Why should New York undertake to limit the effect of a Massachusetts law, when it was not in conflict with her own. Why should she undertake to divest a title vested under Massachusetts law?

And see 2d point and cases *supra*.

Eighth Point.

The learned Chief Justice refers to the proceedings in Massachusetts as *in invitum* in respect to Gibbs, Jenney & Allen.

They were not *in invitum*.

Gibbs, Jenney & Allen were not proceded against in opposition to their will, but they voluntarily by petition invoked the aid of the law of Massachusetts, instead of accomplishing precisely the same result by making a deed of trust for the equal benefit of their creditors. #

Ninth Point.

It is suggested by the learned Chief Justice that the property out of a State cannot pass by its insolvent laws, because it is said the laws of a State have no force *proprio vigore* beyond its territorial limits, and therefore no title to the Arctic, while on the ocean passes to the assignees.

1. The property was as we have shown in legal contemplation and construction, and by fiction of law, within Massachusetts.

Abraham vs. *Plestero*, 1 *Paige*, 236; 4 *Wend.*, 283; 1 *Kent Com.*, *vol.* 1, *p.* 26.
Hoyt vs. *The Commissioners of Taxes*, 23 *N. Y.*, 224.

That voluntary petition with the statutory assignment affixed to it as a legal consequence involved and effected an assignment, as truly voluntary as if the instrument of assignment itself had been executed by the insolvents without judicial proceedings. And in case of a voluntary assignment it is admitted that the Arctic when on the high seas would have passed irrevocably to the assignees.

2. The fallacy of the proposition lies in the assumption that that phrase is to be taben literally in all cases, while it is used and applies only to those cases where there exists a conflict of laws.

It is conceded that it is the law that a voluntary sale of goods in Massachusetts conveys the title to the goods, although they are on the ocean or in another State, provided the law of the State where the sale is and by which the contract of sale is construed does not conflict with the laws of the State where the property is at the time of sale. In that case the *law of the State reaches to the goods* in another State to pass the title, although process to enforce such law does not run into another State, either in the hands of the marshal or the sheriff. And the State law no more actually reaches the property nor can be enforced by the State than it can be when there is a statutory assignment. The truth is, that it is the law of Massachusetts that a voluntary sale of property made in Massachusetts, does pass property although situated in New York. If the doctrine were sound, that the law of Massachusetts could not pass title, if the property were not within her jurisdiction or within the reach of her sheriff or marshal, the doctrine would apply to that case, as well as to the one at bar; but the answer is that notwithstanding any such reasoning, notwithstanding the expression used in the books, that laws have no extra-territorial force, they have extra territorial effect, and acts done in accordance with such law, pass the title to property beyond their jurisdiction every day of the week *except when there is a conflict of laws.*

Cases supra.

So our position is that, notwithstanding that phrase, the acts done in pursuance of a bankrupt or insolvent law do pass the title to property which its sheriff or marshal cannot seize *wherever such laws do not impair the remedies of creditors or their securities* ~~*when such acts*~~ *where the property is.*

are done. This is the qualification which attends the limitation of their effect in every case when rightly construed, or if the qualification is omitted in the opinions delivered, it is because the facts of the case under consideration do not require its expression.

Tenth Point.

The learned Chief-Justice says that laws are of no force without the power to execute them, leaving the inference to be drawn that for that reason such laws were invalid. This was clearly error; for if that be law, then it is not the law that a *voluntary* sale of a ship on the high seas does convey title to her, because she is, in fact, beyond the reach of the sheriff or marshal.

Then, if a man endorses a promissory note in New York and goes to England, according to the learned Chief-Justice, it is not the law of New York that he shall pay it upon protest if the maker does not, because the Courts of New York have no *power to enforce* that law.

Eleventh Point.

In respect to the matter of comity; that may apply as between a State and some foreign nation, but the constitutional provision and the law of Congress referred to make that to be law which, without them, would be a matter of comity *where there is no conflict of laws.*

It was wisely intended to dispose of that very question, and by the Supreme law compel the recognition

of titles obtained according to the law and usage of one State in every other.

How much wiser that policy than the narrow, illiberal short-sighted and selfish doctrine of the New York Court of Appeals, which in this case, if successful, would work so gross an injustice.

No doubt the law and usage as to our recognition of foreign laws may have originated in the practice of comity as to the matter of contracts, marriage, the succession to personal property, as well as voluntary assignments and assignments by operation of law, but the giving effect to the foreign law becomes in the end a rule of our own Courts and a well-settled rule of municipal comity. This comity the Constitution of the United States transforms into paramount law.

If, then, the *Arctic*, at the time of the assignment in insolvency, being then on the high seas, was by the law of Massachusetts transferred to and vested in the assignee, no hostile right or claim of any other jurisdiction being then in existence, not only comity imposes upon every foreign jurisdiction the obligation of recognizing that transfer of title, but the Constitution explicitly enjoins that full faith and credit be given to it everywhere.

Twelfth Point.

Kent and Story, who gave the matter full consideration, and also Chief-Justice Parsons, of Massachusetts, are in favor of the broad doctrine, firmly established in England and on the continent of Europe, that personal property, wherever situated, passes by insolvents' and bankrupts' assignments, made according to the law of the country in which the bankrupt has his domicil, *even as against creditors.*

Holmes vs. *Remsen*, 4 *Johns. Chan. R.*, 460.

Story's Conflict of Laws, §430.

Goodwin vs. *Jones*, 3 *Mass. R.*, 517.

And Justice Story, in referring to the great authority of Kent, very aptly quoted the language of a great orator of antiquity, "*ego assentior Scaevolae.*"

And it is respectfully submitted, that the Court, on a close examination of the reasoning of the great chancellor, and of the great professor, judge and commentator, will be strongly inclined to their view.

But in this case the plaintiffs in error do not ask or require the endorsement of that position, but only that property which passed to them when it was on the high seas, which are free and common to all, and on which all are on a footing of entire equality, be not taken away from them by the Courts of New York for the exclusive benefit of one of its citizens, because the learned Chief-Justice conceived it to be his duty to prefer such New York creditor to all the other creditors instead of permitting him to share equally with the other creditors of the insolvent.

Lastly.

The judgment of the Court of Appeals should be reversed, and that of the Supreme Court below, affirmed, with costs.

STANLEY, LANGDELL & BROWN,
Att'ys for Appellants.

~~W. STANLEY,~~
~~Of Counsel.~~

Edward
W. Stanley

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Edwards Pierrepont &
W. Stanley Counsel

Evening Post Steam Presses, 41 Nassau Street, cor. Liberty, N. Y.

Supreme Court

OF THE UNITED STATES.

John Kelly, Sheriff, Etc., Deft. in Error, *ads.* William W. Crapo et al., Plffs. in Error.	No. 154.

Brief of Defendant in Error.

STATEMENT.

The controvery is between John Kelly, Sheriff of the city and county of New York (the plaintiff below), under an attachment levied by him upon the ship *Arctic*, at the suit of a New York creditor, and certain statutory assignees, under the Insolvent Laws of Massachusetts, who asserted a right to the possession of the ship, *after and notwithstanding the Sheriff's attachment*,

and relieved the ship from custody by giving a bond for the value attached, which was sued by the Sheriff in the Court below.

The history of the transaction and of the suit shows, that on the 24th of April, 1861, Edward Mott Robinson, a citizen and resident of New York, commenced an action in the Supreme Court of that State, against Gibbs, Jenny & Allen, to recover the sum of $6,004,06, being the amount due on their two promissory notes, dated at Fairhaven, Massachusetts, on the 21st day of June, 1860, and the 3d day of September, 1860, respectively, each for $3,000, at five months from date, and being made by Gibbs & Jenney, and endorsed by Allen. Gibbs, Jenney and Allen all resided in Massachusetts, and on that ground, upon the usual affidavit and undertaking, a warrant of attachment was issued in the action to the plaintiff, the Sheriff of the county of New York, against their property, the proceedings being in all respects conformable to the provisions of the Code in such cases.

On the 30th of April, 1861, the ship *Arctic* arrived at New York, direct from the Pacific Ocean, and the Sheriff on that day seized her in the harbor, and, under the warrant, attached one undivided half of her, as being the property of Gibbs, Jenny & Allen. On the 10th of June the defendants, Crapo and others, claiming to be themselves the owners of the property attached, made application, as provided by the Revised Statutes in such cases, for an appraisement of its value. It was accordingly appraised at $3,000, and the vessel was released from custody, and delivered to the claimants, upon their executing to the sheriff, with the defendants Williams and Minturn, as sureties, the bond required by the Statute, conditioned that in a suit to be brought on said bond the claimants would establish that they were the owners of the share of the vessel attached at the time of its seizure ; and in case of their failure to do so, that they would pay to the sheriff the amount of the valuation, with interest from the date of the bond.

The attachment was never set aside or discharged, and Robinson, the attaching creditor, proceeded in the original action, and recovered judgment for the whole amount claimed against Gibbs, Jenney & Allen, upon which execution was issued, which remains in the hands of the plaintiff, wholly unsatisfied.

The defendants, who claim the property attached, are the duly appointed assignees in insolvency in Massachusetts, holding assignments from the Judge of that Court, executed respectively on the 12th of February and 6th of March, and purporting to assign to them all the estate, real and personal, of the said Gibbs, Jenney & Allen, who are admitted to have been, at the time of the taking of the proceedings, in insolvency, owners of the property attached. The vessel belonged to the port of Fairhaven, in Massachusetts, and was there registered, as to one-half, in their names. *No assignment was made by the insolvents themselves.*

On the 12th of November, 1860, the *Arctic* was at Honolulu, in the Sandwich Islands, under charter to the American Guano Company of New York, to proceed from Honolulu to Baker's and Howland's Islands, in the Pacific, and there receive on board a cargo of guano, and transport the same to New York, and on the 12th of that month, or soon after, she sailed from that port for Baker's and Howland's Islands in the Pacific, for a cargo, and thence, on the 18th of January, 1861, for New York, where she arrived, as before stated, on the 30th of April, and was then attached.

The assignees never had possession until after the attachment, and on the 2d of May, hearing that she had arrived, came from New Bedford to New York, and finding her in the custody of the sheriff, obtained possession of her by giving the bond on which this action is brought.

The Statute which provides for the giving of this bond expressly limits the obligors, when sued upon it by the Sheriff, to a single point of defence.

Rev. Stat. Pt. II., ch. V., t. 1, art. 1, § 17.

" In such suit the claimant may give in evidence, in " bar of a recovery, that he was the owner of the " vessel or share seized at the time of issuing such " warrant. If he fail to establish such ownership, or " if judgment shall pass against him by default or on " demurrer, the party prosecuting such suit shall re- " cover the amount of the valuation of such vessel or " share, with interest from the date of the bond to be " assessed as damages."

The suit raises but a single quesion for controversy, to wit, whether a New York creditor of the insolvents, by his prior attachment of their property in the State of New York, and pursuant to the laws of that State, can hold the property against the *subsequent* possession or claim of possession of such property, asserted in the State of New York, by authority of a Statutory sequestration under the laws of Massachusetts of the general property of the debtors for the benefit of their creditors, and seeking to take the property out of the possession of the New York Sheriff, on the ground of the sequestration of the Massachusetts Insolvent Statute antedating the New York Sheriff's attachment.

By the final judgment of the Court of Appeals of the State of New York, the Sheriff's title was upheld, and a recovery accordingly was had upon the bond for value, given by the defendants below.

The case was brought here, as open to review by this Court, under the 25th section of the Judiciary Act.

POINTS.

First Point.—This Court has no jurisdiction of the cause, as the controversy between the two competing claims of creditors, the one asserted by the New

York Sheriff, and the other by the Massachusetts' sequestrators, involves no question under the Constitution or Statutes of the United States, and the record discloses no such question.

Certainly, the fact that controversies between litigants involve rights or titles claimed under the laws and jurisprudence of *different* States, does not subject the determinations of State Courts, made the forum of such controversies, to review by this Court. Unless the controversy, and its decision in the State Court, involves the further element that some right or protection claimed under the Constitution of the United States has been denied by the State Court, its judgment is not reviewable here.

Maxwell *vs.* Newbold, 18 How., 511.
Hoyt *vs.* Shelden, 1 Black, 518.

Second Point—The pretence that because, under the laws of Massachusetts, the sequestration of the insolvents' property is effected through the agency of a "Judge of Probate and Insolvency," and the administration of the insolvents' assets and distribution among creditors is committed to the same supervision, *therefore* the maintenance by the *lex fori* of the Sheriff's title, in preference to the Massachusetts assignees' title, raises a question under the first section of the IVth Article of the Constitution, and the Act of 1790 under the same, is preposterous.

Certainly, if the insolvent proceedings in Massachusetts are to be considered as within the sense of this Article of the Constitution, "Judicial Proceedings," the fullest faith and credit was given to their utmost purport at the trial of this cause in the New York Courts.

Certainly, no "judicial proceeding" in Massachu-

setts has adjudicated anything whatever concerning the ship *Arctic*, her title or possession, or any consequences that have attached to her by reason of the insolvency of her owners.

Certainly, the controversy between these two competing pursuits of the ship *Arctic* in the port of New York was *res integra*, as a judicial question, when the action, now under review, was commenced in New York.

Certainly, no adjudication on this controversy has ever yet been had in Massachusetts, and all that the insolvent proceedings in Massachusetts have contributed *towards* such an adjudication has been to furnish the assignees a *persona standi*, which has been fully recognized in the New York Courts.

The case of Green *vs.* Van Buskirk, 5 Wall., 310, and 7 Wall., 139, where this section of the Constitution has been recently and fully considered, while it upheld the appellate jurisdiction of this Court in that case, manifestly excludes it in this.

The Illinois Court, in that case, had passed judgment *in rem*, and the New York Court, in trying the title to the *res*, subsequently, was held by this Court to have refused such faith, credit and effect to the Illinois judgment as it was entitled to under the Constitution of the United States and the Act of 1790.

The case of Green *vs.* Van Buskirk, upon the merits (7 Wall), seems conclusive of this case, upon *its* merits; that is to say, that the *lex fori* where the *res* is found must determine when and how it shall be subjected to the pursuit of creditors seeking the forum.

Third Point.—But, if the judgment of the Court of Appeals of the State of New York is reviewable here, that judgment is clearly right.

I. The attaching creditor Robinson was a resident, subject and citizen of New York, and as such entitled to the protection of its tribunals, and to seek their aid and remedies in asserting his claims against his debtors, and in satisfying his debt out of their property found within that jurisdiction.

II. The insolvent proceedings in Massachusetts never operated, or purported to operate, to transfer, by their own force, possession of *choses in possession* beyond the jurisdiction of the powers of the Court, to wit., the county of its jurisdiction.

Whatever further transfer of property, beyond this coercive possession by the messenger of the Court, was competent for the Statute or for the Court, was by virtue of the jurisdiction over the *persons* of the insolvents, and needed *their* personal exercise of their *jus disponendi* in aid of the Court.

Rec., fols, 14–19.

Gen. St. Massachusetts, Ch., 118, p. 590, § 70.

This section provides that the debtor "shall, when required by the assignees, make and execute all such deeds and writings, and do all such other lawful acts and things which may be necessary or useful for confirming the assignment so made by the said Judge, and for enabling the assignees to demand, recover and receive all the estate and effects assigned as aforesaid, *especially such part thereof, if any, as may be without this Commonwealth.*"

III. Under these circumstances, when Robinson, the domestic creditor, pursuing the remedies of the *lex fori*, had levied his attachment and put the Sheriff in possession of the ship *Arctic*, it needs no argument to show that the Massachusetts Statute cannot oust the New York Sheriff and sequestrate the ship.

The lien acquired by the plaintiff under the attachment thus issued is superior to any claim or title of the defendants, who are but Statutory assignees appointed under the insolvant laws of Massachusetts, and vested only with such rights as the Judge of Probate and Insolvency under that law could give them.

It is too late to dispute the doctrine (which has been accepted and established throughout the United States), that the insolvent laws of a State have no force to transfer the title to property not within the territory of the State, and that the title of such assignees will not be recognized when it comes in conflict with liens acquired by domestic creditors under the local laws. International comity may require us to permit such assignees to come here and take possession of property and collect choses in action, but they must take subject to the prior liens of creditors here who, by greater diligence, have availed themselves of the remedies provided by our laws against the property of the debtor.

In this case the attachment had been already levied before the assignees arrived in the State for the purpose of taking possession.

Holmes *vs.* Remsen, 20 Johns., 229.
Abrahams *vs.* Plestoro, 3 Wend., 538.
Hunt *vs.* Johnson, 23 Wend., 87.
Mosselman *vs.* Caen, 34 Barb., 66.
Olyphant *vs.* Atwood, 4 Bosw., 459.
Willets *vs.* Waite, 25 N. Y., 577.
Clark *vs.* Booth, 17 How. U. S., 322.
Ogden *vs.* Saunders, 12 Wheat., 219.
Harrison *vs.* Sterry, 5 Cranch, 289.
Milne *vs.* Morton, 6 Binn., 353.
Green *vs.* Van Buskirk, 5 Wall, 310; 7 Id., 139.
Guillander *vs.* Howell, 35 N. Y. Rep., 657.

In *Holmes* vs. *Remsen*, 20 Johns., 265, Platt, J., says: "In my judgment, the most convenient and practical "rule is that Statutory assignments, as to creditors, "shall operate *infra territoriam* only. If our citizens "conduct themselves with a reference to our own laws, "in regard to property of their debtors found within "our jurisdiction, it seems reasonable that they should "reap the fruits which those laws promise to them. "Let each government in such cases sequester and "distribute the funds within its jurisdiction, and the "general result will be favorable to the interests of "creditors and the harmony of nations."

In a case between the same parties, *Holmes* vs. *Remsen*, 4 Johns. Ch. Rep., 460, Chan'r Kent had yielded to the English doctrine, and held the title of English Assignees in Bankruptcy to be paramount the world over, but in his Commentaries (2 Kent Com. *460), he declares that that decision has been overruled, "and "that the weight of American authority is decidedly "the other way. And it may now be considered as "part of the settled jurisprudence of this country, that "personal property, as against creditors, has locality, "and the *lex loci rei sitæ* prevails over the law of the "domicile with regard to the rule of preferences in "the case of insolvent's estates. The laws of other "governments have no force *beyond their territorial* "limits; and if permitted to operate in other States it "is upon a principle of comity, and only when neither "the State nor its citizens would suffer any inconve- "nience from the operation of the foreign law."

In *Johnson* vs. *Hunt*, 23 Wend., 91, Cowen, J., says: "The amount of the decision (in *Abrahams* vs. *Ples-* "*toro*), as I understand it, is, that an assignment, *in* "*invitum*, under the laws of one State or nation, has "no operation in another."

In *Olyphant* vs. *Atwood*, 4 Duer, 462, the Court

says: "The assignment in bankruptcy being Stat-
"utory, has no extra territorial operation, at least
"in passing title to the bankrupt's property,
"beyond the country where the law was passed."

In *Willets* vs. *Waite*, 25 N. Y., 584. The Court said: "In the case of evolution of title by act
"and operation of law, whether by forfeiture,
"bankruptcy, insolvency or otherwise, the trans-
"fer depending upon positive law, is only oper-
"ative where such law prevails and is obligatory;
"and as the laws of a State or Government have
"no extra territorial force, it follows that title to
"property in one State does not pass by virtue of
"a law of a foreign State, although it be the State
"and domicil of the owner. The law operates,
"if at all, *in rem*, and the State by whose legis-
"islation it is enacted having no jurisdiction over
"property without its territorial limits, it is en-
"tirely inoperative in respect to it."

In *Harrison* vs. *Sterry*, 5 Cranch, 302, Ch. J. Marshall said: "The bankrupt law of a foreign
"country is incapable of operating a legal trans-
"fer of property within the United States."

In *Clark* vs. *Booth*, 17 How., 337, Wayne, J., after reviewing the history of the subject, and showing how the English rule, recognizing the title of foreign assignees in bankruptcy, was established there at a time when England had become the great creditor nation, and her interests prompted a change of the rule, says: "In New
"York the ubiquity of the operation of the bank-
"rupt law, as respects personal property, was de-
"nied in *Abrahams* vs. *Plestoro*. Chancellor Kent
"considers it to be a settled part of the jurispru-
"dence of the United States that a prior assign-
"ment under a foreign law will not be permitted

" to prevail against a subsequent attachment of
" the bankrupt's effects found in the United States.
" The Courts of the United States will not subject
" their citizens to the inconvenience of seeking
" their dividends abroad, when they have the
" means to satisfy them under their own control.
" We think that it would prejudice the rights of
" the citizens of the States to admit a contrary
" rule."

In *Hoyt* vs. *Thompson*, 1 Selden, 340, Ch. J. Ruggles said: " It is a conceded principle that the
" laws of a State have no force, *proprio vigore*,
" beyond its territorial limits. But the laws of
" one State are frequently permitted by the cour-
" tesy of another to operate in the latter for the
" promotion of justice, where neither that State
" nor its citizens will suffer any inconvenience
" from the application of the foreign law."

Fourth Point.—Nor in this view does the fact that the property in dispute was an American ship, registered under the Acts of Congress, at Fairhaven, in Massachusetts, make any difference, or enable her to carry with her the operation of the Insolvent Law of Massachusetts round the world. Massachusetts, whatever may be the extent or quality of her sovereignity at home, has no jurisdiction or legislative dominion on the high seas.

Upon the high seas the attachment law of New York had as much dominion over her as the insolvent laws of Massachusetts. She was equally removed from the operation of both. After leaving Massachusetts she was free from the operation of the one, and until she reached New York she was exempt from that of the other. She was indeed the property of a citizen of the

State from which she sailed, and, as property, followed his person so far that his acts and contracts in respect to her were to be controlled by the *lex loci contractus*, but it was only *through the owner* that that law could operate upon her. So that if he sold or mortgaged her, or made any other contract respecting her in Massachusetts, or if he died, domiciled there, and bequeathed her by will, or died intestate as to her, the laws of Massachusetts would regulate the rights of property in her arising from these incidents. So in respect to the taxing power, being within no other State, it would properly be held that the owners residing where she was registered would be properly taxable for her there. But in no other or larger sense can it justly be said that at sea she was governed by or subject to the laws of Massachusetts. The American doctrine, as to the effect of foreign bankrupt assignments, has always been a recognized and admitted exception to the rule that personal property follows the person of the owner.

Fifth Point.—It being clear, therefore, that in respect to the ship at sea, the assignment was inoperative, *proprio vigore*, and can only be recognized by the Courts of the State in the furtherance of justice, and where the convenience and rights and remedies of its citizens shall not be prejudiced, the simple question remains whether, because the vessel did not arrive until after the assignment was executed, comity requires that a New York creditor of the insolvent, pursuing with diligence the remedy prescribed by the law of New York, shall be deprived of the fruits of his diligence, for the accommodation and benefit of the assignees and the Massachusetts creditors whom they represent. To this there can be but one answer, and

the right of the New York creditor must be preferred and his remedy upheld.

The reasons upon which this policy of protecting the rights of domestic creditors have always been rested, apply with equal force to property of the insolvent brought into the State after the assignment, as to that which happens to be here at the exact moment of the assignment. Their convenience, their natural right to all the securities and remedies which the laws of their own State afford, the fairness of allowing them to reap the fruits of their diligence, the hardships of sending them to a foreign State or country for dividends, when a remedy lies at their own doors, and those consideration of general utility which relate to the general interests of creditors and the harmony of States, all lead to the same policy and necessity in respect of property of the insolvent attached by the diligent creditor, no matter at what precise moment it came within the State.

Story's Conf. Laws, § 414.

Sixth Point.—The learned counsel for the plaintiffs in error, in his brief, virtually concedes, that if the point in issue is regarded as a question of *comity* between attaching creditors and foreign Statutory assignees, contending for property situated as this ship was at the time of the assignment, the superior rights of the former must prevail. He seeks to avoid the question of comity altogether, and rests the argument upon the proposition that the operation of the Insolvent Law of Massachusetts did *proprio vigore* transfer the absolute title of the ship, being at sea, to the assignees, to the exclusion of creditors attaching under the laws of whatever State and jurisdiction she should first reach.

This proposition is in defiance of the settled law of the

Federal and State Courts. And, not only is there no authority whatever for the new and startling proposition contended for; not only must this Court, to establish it, override the well settled current of American law, by which bankrupt laws and proceedings of foreign States have been allowed no effect upon property situated outside of their torritorial limits, but the result sought to be obtained will be contrary to our best interests and subsversive of our long established and well recognized policy. It will be a complete abandonment of the American doctrine, and a submission to the rule devised by Great Britain for her own benefit, as the great creditor nation of the world, so that she might, in the language of Judge Platt in *Holmes* vs. *Remsen*, 20 Johns., 264, "by issuing a commission against a bankrupt merchant in London, spring a net, which shall cover all the effects of such bankrupt throughout the world, and draw them all to her own forum for distribution, * * * for the fact cannot be disguised that Great Britain having the most extended commerce, and her merchants and manufacturers *crediting* abroad vastly more than they *owe* to foreign creditors, has a strong and peculiar interest in contending for a rule which draws to herself the distribution of all the effects which her lucrative commerce has dispersed over the globe."

Unfortunately, our relative position in this respect has not been changed in the lapse of fifty years since that case was decided. The foreign nations are still and to a greatly increased extent our creditors, and especially so with regard to goods at sea, in foreign bottoms. To these the doctrine contended for is quite as applicable as to Massachusetts ships arriving at our port. And this Court is now asked to make a decision which, as to the immense interest of our foreign importations daily arriving in the Port of New York, will defeat the just claims of domestic creditors in all cases of foreign bankruptcy of the owner and shipper occurring after their shipment and before arrival.

Looking at the question in this light as one "of policy and of public utility," and with a view to what "the best interests of our own subjects require," there would seem to be no doubt of the inexpediency of extending the rule of comity farther than it has ever yet been carried, and to cover the goods or ships of foreign bankrupts at sea, and destined for our ports at the time of the bankruptcy.

Seventh Point.—Massachusetts is the last State in the Union to which any enlarged comity should be extended in regard to the recognition of her insolvent laws, and of titles thereby created. In 1854, the Supreme Court of that State decided that an assignment of property in that Commonwealth, made in New York by an insolvent citizen of New York, to a trustee for the benefit of creditors, giving preference to certain creditors, also citizens of New York, is ineffectual as against an attachment made in Massachusetts by a citizen thereof.

When a State, which pursues such a policy, sends her assignees in insolvency to New York, to take possession of property, no principle of comity, heretofore announced, can require our Courts, for their benefit, to take the property away from New York creditors, who have acquired a prior lien.

Zipcey *vs.* Thompson, 1 Gray, 243.

"In regard to goods and merchandise belonging to a foreign bankrupt or insolvent person found here, if attached before any possession is taken by the assignees, whether under a commission of bankruptcy or otherwise, the attaching creditor would hold, because delivery, either actual or constructive, is necessary to complete the transfer."

Blake *vs.* Williams, 6 Pick., 303.
Lanfear *vs.* Sumner, 17 Mass., 110.

"All comity of this sort must be built up in a great measure upon the doctrine of reciprocity."
Story's Conf. Laws, § 414.

Last Point.—The judgment of the Court of Appeals of the State of New York should be affirmed.

WM. M. EVARTS,
Of Counsel for Defendant in Error.

N. Y. Court of Appeals.

JOHN KELLY, SHERIFF, &c.,

Appellant,

against

WILLIAM W. CRAPO, ET AL,

Respondents.

OPINION OF JUSTICE FOSTER.

EVARTS, SOUTHMAYD & CHOATE,

Appellant's Attorneys.

STANLEY, LANGDELL & BROWN,

Respondents' Attorneys

NEW YORK:
EVENING POST STEAM PRESSES, 41 NASSAU STREET, CORNER LIBERTY.
1870.

Court of Appeals. 1

JOHN KELLY, Sheriff of the City and County of New York,
Applt.

agst.

WILLIAM W. CRAPO, GEORGE F. Tripp, Joshua B. Tobey, Reuben Nye, George A. Shaw and others,
Respdts.

FOSTER, J.: 2

If the *Arctic* had been within the territorial limits of this State at the time of the assignment under the insolvency proceedings, the defendants as residents of Massachusetts, and especially in view of the rule adopted by her courts in regard to cases arising under our insolvent laws, could hardly expect a preference over a seizure of the vessel by virtue of an attachment issued and levied here, at the suit of a resident creditor before the possession was taken by them under the assignment.

On the other hand, if the vessel at the time of the assignment had been within the territorial limits of Massa- 3

4 chusetts, the assignment would divest the title of the insolvent and pass it to the assignees, provided they exercised due diligence to reduce it to possession, so that a subsequent attachment against the insolvent in behalf of a creditor resident here would not authorize its seizure. Neither of these propositions seem to be controverted by the counsel, and I think are too well settled to need the citation of authorities.

It is equally clear that if the transfer of the half of the vessel had been made to them by bill of sale from Gibbs, Jenney & Allen, (the vessel being at the time on the high seas,) the absolute title would have passed to them thereof; so as between them and their vendors to divest
5 the vendors of all claim thereto, and as between them and the creditors of the vendors also, unless they permitted the possession thereafter to remain unchanged to such extent as evidenced that the sale was fraudulent. (1 Parsons Maritime Law, 78, 79, 80, and note, and Abbott on Shipping, 6th Am. Ed., 36 and note, where it is said, "Where a vessel is sold while at sea, it is sufficient for the vendee, in order to maintain his title against a subsequent purchaser or attaching creditor to prove the possession of her without unreasonable delay after her arrival; and whether possession has been taken within a reasonable time, is a question of fact for the jury under the circumstances." Joy *vs.* Sears, 9 Pick, 4; Brierly *vs.* Spring, 7 Greenl., 241; Gardner *vs.* Houbert, 2 Pick, 602; Turner *vs.* Coolidge, 2 Met, 350; Wheeler
6 *vs.* Somner, 4 Mason, 183; 3 Kent, (5th ed.,) 133, and Conard *vs.* Atlantic Ins. Co., 1 Peters, 449, and Parsons on Mercantile Law, at pages 78 and 79, says: "The principles we should say are these: First, that the sale, meaning a transfer on good consideration, and in good faith, does not give merely an inchoate right, to be completed by possession, but does in fact pass the whole property in the ship, and is a complete transfer thereof, vesting the same in the purchaser, but liable to be divested by his laches in taking possession. Second, that the purchaser is not bound to take possession as soon as

possible by any means; he is not bound to go or send 7
an agent, or even transmit authority at once to a foreign
and distant port, but may generally at least wait her
arrival at her home port."

It is claimed, however, that the transfer being made by virtue of the statute laws of Massachusetts, and the vessel being at the time beyond the territorial limits of that state, and beyond her jurisdiction, the transfer for that reason is inoperative against the New York creditor, who seized her by virtue of an attachment issued and levied here before the assignees had reduced her to possession.

It is true that the vessel, at the time of the assignment, was outside of the territorial limits of Massachusetts, but 8
was it beyond the control and operation of her laws? How was it beyond the jurisdiction of Massachusetts? Under whose jurisdiction, as property, was it, if not under hers? and especially was it then under the control or jurisdiction of the laws of New York? or what power has said that the personal property of the citizens of Massachusetts, and the control and disposition of it, either by voluntary transfer, or by transfer by operation of her laws on the ocean, is beyond her control? or that the disposition to be made of it under her laws is to be inoperative in any degree, if the property happens to afterwards come into this state, and is attached at the suit of creditors resident here. 9

The vessel not being owned here was in no sense under the jurisdiction or control of the laws of this state when the transfer was made. And there is therefore no question of conflicting law in the case.

The owners of the vessel were subject to the laws of Massachusetts. They could acquire or divest themselves of it only in the manner provided by those laws. It was taxable there and not elsewhere, although it was at sea, and there being no other power to control its ownership, it necessarily follows that a disposition of it in accordance with the provisions of Massachusetts law must pass the title to it.

10 It can scarcely be contended that an assignment in bankruptcy under the Laws of the United States would not pass the title to the assignee, of a vessel owned by the bankrupt, and which was at sea when the assignment was made. And yet the territorial limits of the United States, and her exclusive jurisdiction on the ocean, is confined to the immediate vicinity of her shores, and though for some purposes the General Government has control over the ships and mariners of the several States, it is only for marine and maritime purposes, and for the protection of the persons and property on the ocean, and in no sense in conflict with the right of property thereto acquired by individuals under
11 the Laws of the States where such vessels belong. It is true that the several States have vested in the General Government the exclusive jurisdiction in bankruptcy, and therefore there can be no doubt that such an assignment would pass the title And it is quite as clear that Massachusetts and the other States have not delegated any jurisdiction over the property of the citizens of the States, except for the purposes above mentioned, and such other as are strictly national in their character; and that in regard to such property all else is retained in the exclusive control of the State where the property is owned.

The title was transferred to the assignees pursuant to the Laws of Massachusetts, and this having been done when the vessel was not within our territorial limits, the transfer was valid.

The judgment of the General Term should be affirmed, with costs.